

Section VI. The Contractors State License Board; License Law and Rules and Regulations

Chapter 12. Contractors License Law

BUSINESS AND PROFESSIONS CODE DIVISION 3. CHAPTER 9. CONTRACTORS ARTICLE 1. ADMINISTRATION

Short Title

7000. This chapter constitutes, and may be cited as, the Contractors' State License Law.

Proof of Compliance with Local Business Tax Requirements; Limit on Business Taxes

7000.2. Nothing in this code shall be interpreted to prohibit cities, counties, and cities and counties from requiring contractors to show proof that they are in compliance with local business tax requirements of the entity prior to issuing any city, county, or city and county permit. Nothing in this code shall be interpreted to prohibit cities, counties, and cities and counties from denying the issuance of a permit to a licensed contractor who is not in compliance with local business tax requirements.

Any business tax required or collected as part of this process shall not exceed the amount of the license tax or license fee authorized by Section 37101 of the Government Code or Section 16000 of the Business and Professions Code.

(Added by Stats. 1992, Chapter 325 (AB 2710).)

Contractors' State License Board

(Operative until July 1, 2007; Repealed January 1, 2008)

7000.5. (a) There is in the Department of Consumer Affairs a Contractors' State License Board, which consists of 15 members.

(b) The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of this board by the department shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

(c) This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended by Stats 2000 Chapter 1005 § 1 (SB 2029), operative until July 1, 2003.). Amended Stats 2002 Chapter 744 § 2 (SB 1953), inoperative July 1, 2007, repealed January 1, 2008.

Priority of board; Protection of the Public

7000.6. Protection of the public shall be the highest priority for the Contractors' State License Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

(Added Stats 2002 Chapter 744 § 3 (SB 1953).)

Qualification of Board Members

7001. All members of the board, except the public members, shall be contractors actively engaged in the contracting business, have been so engaged for a period of not less than five years preceding the date of their appointment and shall so continue in the contracting business during the term of their office. No one, except a public member, shall be eligible for appointment who does not at the time hold an unexpired license to operate as a contractor.

The public members shall not be licentiates of the board.

(Amended by Stats. 2000, Chapter 1005 (SB 2029).)

Membership of Board

7002. (a) One member of the board shall be a general engineering contractor, two members shall be general building contractors, two members shall be specialty contractors, one member shall be a member of a labor organization representing the building trades, one member shall be an active local building official, and eight members shall be public members, one of whom shall be from a statewide senior citizen organization.

(b) No public member shall be a current or former licensee of the board or a close family member of a licensee or be currently or formerly connected with the construction industry or have any financial interest in the business of a licensee of the board. Each public member shall meet all of the requirements for public membership on a board as set forth in Chapter 6 (commencing with Section 450) of Division 1. Notwithstanding the provisions of this subdivision and those of Section 450, a representative of a labor organization shall be eligible for appointment to serve as a public member of the board.

(c) Each contractor member of the board shall be of recognized standing in his or her branch of the contracting business and hold an unexpired license to operate as a contractor. In addition, each contractor member shall, as of the date of his or her appointment, be actively engaged

in the contracting business and have been so engaged for a period of not less than five years. Each contractor member shall remain actively engaged in the contracting business during the entire term of his or her membership on the board.

(d) Each member of the board shall be at least 30 years of age and of good character. In addition, each member shall have been a citizen and resident of the State of California for at least five years next preceding his or her appointment.

(e) For the purposes of construing this article, the terms "general engineering contractor," "general building contractor," and "specialty contractor" shall have the meanings given in Article 4 (commencing with Section 7055) of this chapter.

(Amended by Stats. 2000, Chapter 1005 (SB 2029).)

Tenure; Qualifications; Appointment of Board Members; Vacancies

7003. Except as otherwise provided, an appointment to fill a vacancy caused by the expiration of the term of office shall be for a term of four years and shall be filled, except for a vacancy in the term of a public member, by a member from the same branch of the contracting business as was the branch of the member whose term has expired. A vacancy in the term of a public member shall be filled by another public member. Each member shall hold office until the appointment and qualification of his or her successor or until the office is deemed to be vacant pursuant to Section 1774 of the Government Code, whichever first occurs.

Vacancies occurring in the membership of the board for any cause shall be filled by appointment for the balance of the unexpired term.

No person shall serve as a member of the board for more than two consecutive terms.

The Governor shall appoint four of the public members, including the public member who is from a statewide senior citizen organization, the local building official, the member of a labor organization representing the building trades, and the five contractor members qualified as provided in Section 7002. The Senate Rules Committee and the Speaker of the Assembly shall each appoint two public members.

(Amended by Stats. 1999, Chapter 983 (SB 1307); Stats. 2000, Chapter 1005 (SB 2029).)

See Government Code 1774, Vacancies; Appointments and Reappointments by the Governor and Senate, in Appendix.

Removal

7005. The Governor may remove any member of the board for misconduct, incompetency or neglect of duty.

Quorum

7007. Eight members constitute a quorum at a board meeting.

Due notice of each meeting and the time and place thereof shall be given each member in the manner provided by the bylaws.

(Amended by Stats. 2000, Chapter 1005 (SB 2029).)

Committees; Rules and Regulations

7008. The board may appoint such committees and make such rules and regulations as are reasonably necessary to carry out the provisions of this chapter. Such rules and regulations shall be adopted in accordance with the provisions of the Administrative Procedure Act.

Oaths

7009. Any member or committee of the board may administer oaths and may take testimony and proofs concerning all matters within the jurisdiction of the board.

Power of Board

7010. The board is vested with all functions and duties relating to the administration of this chapter, except those functions and duties vested in the director under the provisions of Division I of this code.

Registrar of Contractors

7011. The board by and with the approval of the director shall appoint a registrar of contractors and fix his or her compensation.

The registrar shall be the executive officer and secretary of the board and shall carry out all of the administrative duties as provided in this chapter and as delegated to him or her by the board.

For the purpose of administration of this chapter, there may be appointed a deputy registrar, a chief reviewing and hearing officer and, subject to Section 159.5, other assistants and subordinates as may be necessary.

Appointments shall be made in accordance with the provisions of civil service laws.

This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended by Stat 1999 Chapter 656 § 6 (SB 1306); Stats 2001 Chapter 615 § 9 (SB 26), effective October 9, 200; Stats 2002 Chapter 744 § 4 (SB 1953), inoperative July 1, 2007, repealed January 1, 2008.)

Prohibition Against Double Penalty for Same Offense

7011.3. The registrar shall not assess a civil penalty against a licensed contractor who has been assessed a specified civil penalty by the Labor Commissioner under Section 1020 or 1022 of the Labor Code for the same offense.

Enforcement of Licensing Provisions

7011.4. (a) Notwithstanding Section 7011, there is in the Contractors' State License Board, a separate enforcement unit which shall rigorously enforce this chapter prohibiting all forms of unlicensed activity.

(b) Persons employed as deputy registrars in this unit and designated by the Director of Consumer Affairs are not peace officers and are not entitled to safety member retirement benefits. They do not have the power of arrest. However, they may issue a written notice to appear in

court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code.

(Amended by Stats. 1994, Chapter 413 (SB 1694).)

See Government Code Section 11181, Powers in Connection with Investigations and Actions, in Appendix.

Investigators; Authority of Peace Officers

7011.5. Persons employed as investigators of the Special Investigations Unit of the Contractors State License Board and designated by the Director of Consumer Affairs have the authority of peace officers while engaged in exercising the powers granted or performing the duties imposed upon them in investigating the laws administered by the Contractors State License Board or commencing directly or indirectly any criminal prosecution arising from any investigation conducted under these laws. All persons herein referred to shall be deemed to be acting within the scope of employment with respect to all acts and matters in this section set forth.

Investigation of Complaints; Qualification and Limitation

7011.7. Review and investigation of complaints; improvement of disciplinary system

(a) The registrar shall review and investigate complaints filed in a manner consistent with this chapter and the Budget Act. It is the intent of the Legislature that complaints be reviewed and investigated as promptly as resources allow.

(b) The board shall set as a goal the improvement of its disciplinary system so that an average of no more than six months elapses from the receipt of a complaint to the completion of an investigation.

(c) Notwithstanding subdivision (a), the goal for completing the review and investigation of complaints that, in the opinion of the board, involve complex fraud issues or complex contractual arrangements, should be no more than one year.

(Amended by Stats. 1989, Chapter 1132, eff. Sept. 29, 1989; Stats. 2000, Chapter 1005 (SB 2029).)

False Complaints Against Contractors; Penalties; Reports

7011.8. (a) Any person who reports to, or causes a complaint to be filed with, the Contractors' State License Board that a person licensed by that entity has engaged in professional misconduct, knowing the report or complaint to be false, is guilty of an infraction punishable by a fine not to exceed one thousand dollars (\$1,000).

(b) The board may notify the appropriate district attorney or city attorney that a person has made or filed what the entity believes to be a false report or complaint against a licensee.

(Added by Stats. 1992, Chapter 437 (AB 2966); amended by Stats. 2001, Chapter 745.)

Cooperation

7012. The registrar, with the approval of the board and the director, may, when funds are available, cooperate in the

enforcement of governmental legislation relating to the construction industry, and, except as provided by Section 159.5, shall appoint such assistants as may be necessary therefor.

Final Authority

7013. The board may in its discretion review and sustain or reverse by a majority vote any action or decision of the registrar. This section shall apply to any action, decision, order, or proceeding of the registrar conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Equipment

7014. The board may procure equipment and records necessary to carry out the provisions of this chapter.

Seal

7015. The board shall adopt a seal for its own use. The seal shall have the words "Contractors' State License Board, State of California, Department of Consumer Affairs," and the care and custody thereof shall be in the hands of the registrar.

Per Diem Expenses

7016. Each member of the board shall receive a per diem and expenses as provided in Section 103.

Report on Complaints and Case Aging Statistics

7017. 3. The Contractors' State License Board shall report annually to the Legislature, not later than October 1 of each year, the following statistical information for the prior fiscal year. The following data shall be reported on complaints filed with the board against licensed contractors, registered home improvement salespersons, and unlicensed persons acting as licensees or registrants:

(a) The number of complaints received by the board categorized by source, such as public, trade, profession, government agency, or board-initiated, and by type of complaint, such as licensee or nonlicensee.

(b) The number of complaints closed prior to referral for field investigation, categorized by the reason for the closure, such as settled, referred for mandatory arbitration, or referred for voluntary arbitration.

(c) The number of complaints referred for field investigation categorized by the type of complaint such as licensee or nonlicensee.

(d) The number of complaints closed after referral for field investigation categorized by the reason for the closure such as settled, referred for mandatory arbitration, or referred for voluntary arbitration.

(e) For the board's Intake/Mediation Center and the board's Investigation Center closures, respectively, the total number of complaints closed prior to a field investigation per consumer services representative, and the total number of complaints closed after referral for a field investigation per enforcement representative. Additionally, the board shall report the total number of complaints

closed by other board staff during the year.

(f) The number of complaints pending at the end of the fiscal year grouped in 90-day increments, and the percentage of total complaints pending, represented by the number of complaints in each grouping.

(g) The number of citations issued to licensees categorized by the type of citation such as order of correction only or order of correction and fine and the number of citations issued to licensees that were vacated or withdrawn.

(h) The number of citations issued to nonlicensees and the number of these citations that were vacated or withdrawn.

(i) The number of complaints referred to a local prosecutor for criminal investigation or prosecution, the number of complaints referred to the Attorney General for the filing of an accusation, and the number of complaints referred to both a local prosecutor and the Attorney General, categorized by type of complaint, such as licensee and nonlicensee.

(j) Actions taken by the board, including, but not limited to, the following:

(1) The number of disciplinary actions categorized by type, such as revocations or suspensions, categorized by whether the disciplinary action resulted from an accusation, failure to comply with a citation, or failure to comply with an arbitration award.

(2) The number of accusations dismissed or withdrawn.

(k) For subdivisions (g) and (j), the number of cases containing violations of Section 7121, 7121.5, and subdivision (e) of Section 7159 categorized by section.

(l) The number of interim suspension orders sought, the number of interim suspension orders granted, the number of temporary restraining orders sought, and the number of temporary restraining orders granted.

(m) The amount of cost recovery ordered and the amount collected.

(n) Case aging data, including data for each major stage of the enforcement process, including the following:

(1) The average number of days from the filing of a complaint to its closure by the board's Intake/Mediation Center prior to the referral for an investigation categorized by the type of complaint, such as licensee or nonlicensee.

(2) The average number of days from the referral of a complaint for an investigation to its closure by the Investigation Center categorized by the type of complaint, such as licensee or nonlicensee.

(3) The average number of days from the filing of a complaint to the referral of the completed investigation to the Attorney General.

(4) The average number of days from the referral of a completed investigation to the Attorney General to the filing of an accusation by the Attorney General.

(5) The average number of days from the filing of an accusation to the first hearing date or date of a stipulated settlement.

(6) The average number of days from the receipt of the Administrative Law Judge's proposed decision to the registrar's final decision.

(Added Stats 2002 Chapter 744 § 5 (SB 1953)).

Posting of Home Improvement Salesperson Registration Applications on Web Site

7017.5. By the close of the first business day of each week, the board shall post the following home improvement salesperson registration information on its Web site:

(a) The earliest enrolled date of the unprocessed applications on file at the close of the prior business day.

(b) The earliest enrolled date of an application for which a registration number has been issued at the time of the posting required by this section.

(Added Stats 2002 Chapter 372 § 1 (AB 2544)).

Notice to Owner

7018.5. (a) The board shall prescribe a form entitled "Notice to Owner" which shall state:

"Under the California Mechanics' Lien Law, any contractor, subcontractor, laborer, supplier, or other person or entity who helps to improve your property, but is not paid for his or her work or supplies, has a right to place a lien on your home, land, or property where the work was performed and to sue you in court to obtain payment.

This means that after a court hearing, your home, land, and property could be sold by a court officer and the proceeds of the sale used to satisfy what you owe. This can happen even if you have paid your contractor in full if the contractor's subcontractors, laborers, or suppliers remain unpaid.

To preserve their rights to file a claim or lien against your property, certain claimants such as subcontractors or material suppliers are each required to provide you with a document called a "Preliminary Notice." Contractors and laborers who contract with owners directly do not have to provide such notice since you are aware of their existence as an owner. A preliminary notice is not a lien against your property. Its purpose is to notify you of persons or entities that may have a right to file a lien against your property if they are not paid. In order to perfect their lien rights, a contractor, subcontractor, supplier, or laborer must file a mechanics' lien with the county recorder which then becomes a recorded lien against your property. Generally, the maximum time allowed for filing a mechanics' lien against your property is 90 days after substantial completion of your project.

TO INSURE EXTRA PROTECTION FOR YOURSELF AND YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR MORE OF THE FOLLOWING STEPS:

(1) Require that your contractor supply you with a payment and performance bond (not a license bond), which provides that the bonding company will either complete the project or pay damages up to the amount of the bond. This payment and performance bond as well as a copy of the construction contract should be filed with the county recorder for your further protection. The payment and performance bond will

usually cost from 1 to 5 percent of the contract amount depending on the contractor's bonding ability. If a contractor cannot obtain such bonding, it may indicate his or her financial incapacity.

(2) Require that payments be made directly to subcontractors and material suppliers through a joint control. Funding services may be available, for a fee, in your area which will establish voucher or other means of payment to your contractor. These services may also provide you with lien waivers and other forms of protection. Any joint control agreement should include the addendum approved by the registrar.

(3) Issue joint checks for payment, made out to both your contractor and subcontractors or material suppliers involved in the project. The joint checks should be made payable to the persons or entities which send preliminary notices to you. Those persons or entities have indicated that they may have lien rights on your property, therefore you need to protect yourself. This will help to insure that all persons due payment are actually paid.

(4) Upon making payment on any completed phase of the project, and before making any further payments, require your contractor to provide you with unconditional "Waiver and Release" forms signed by each material supplier, subcontractor, and laborer involved in that portion of the work for which payment was made. The statutory lien releases are set forth in exact language in Section 3262 of the Civil Code. Most stationery stores will sell the "Waiver and Release" forms if your contractor does not have them. The material suppliers, subcontractors, and laborers that you obtain releases from are those persons or entities who have filed preliminary notices with you. If you are not certain of the material suppliers, subcontractors, and laborers working on your project, you may obtain a list from your contractor. On projects involving improvements to a single-family residence or a duplex owned by individuals, the persons signing these releases lose the right to file a mechanics' lien claim against your property. In other types of construction, this protection may still be important, but may not be as complete.

To protect yourself under this option, you must be certain that all material suppliers, subcontractors, and laborers have signed the "Waiver and Release" form. If a mechanics' lien has been filed against your property, it can only be voluntarily released by a recorded "Release of Mechanics' Lien" signed by the person or entity that filed the mechanics' lien against your property unless the lawsuit to enforce the lien was not timely filed. You should not make any final payments until any and all such liens are removed. You should consult an attorney if a lien is filed against your property."

(b) Each contractor licensed under this chapter, prior to entering into a contract with an owner for work specified as home improvement or swimming pool construction pursuant to Section 7159, shall give a copy of this "Notice to Owner" to the owner, the owner's agent, or the payer. The failure to provide this notice as required shall constitute grounds for disciplinary action.

(Repealed; added by Stats. 1992, Chapter 788 (AB 2736).)

See Civil Code Section 3097, Preliminary 20-Day Notice (Private Work), in Appendix.

Contracting with Licensed Professionals for Inspection of Consumer Complaints

7019. (a) If funding is made available for that purpose, the board may contract with licensed professionals, as appropriate, for the site investigation of consumer complaints.

(b) The board may contract with other professionals, including, but not limited to, interpreters and manufacturer's representatives, whose skills or expertise are required to aid in the investigation or prosecution of a licensee, registrant, applicant for a license or registration, or those subject to licensure or registration by the board.

(c) The registrar shall determine the rate of reimbursement for those individuals providing assistance to the board pursuant to this section. All reports shall be completed on a form prescribed by the registrar.

(d) As used in this section, "licensed professionals" means, but is not limited to, engineers, architects, landscape architects, geologists, and accountants licensed, certificated, or registered pursuant to this division.

(Amended Stats 1991 Chapter 1160 § 4 (AB 2190; Stats 2002 Chapter 1013 § 59 (SB 2026)).)

Copy of Opinion

7019.1 Repealed January 1, 2001 by Stats. 1997, Chapter 812 (SB 857).

Joint Enforcement Actions; Feasibility Study

7019.5. The board shall contract for a feasibility study relating to the development of a system for joint enforcement actions with respect to contractors by the board, the Department of Industrial Relations, the Employment Development Department, and the Franchise Tax Board. The study should include, but not be limited to, the means of accomplishing the following:

(a) Establishment of a common identification number which may be utilized by all those agencies.

(b) Assessment of the current state of technology in the affected departments.

(c) Assessment of the ability, and any impediments, of the affected departments to share information.

(d) Comparison of the standards of proof in the issuance of citations and other administrative enforcement actions.

(e) Ways to consolidate enforcement actions and procedures among the departments.

(Added by Stats. 1990, Chapter 1386 (AB 2282).)

See Unemployment Insurance Code Section 329, Joint Enforcement Strike Force on the Underground Economy, in Appendix.

See also Labor Code Section 106, Authority of the Labor Commissioner, in the Appendix.

Computerized Enforcement Tracking System for Consumer Complaints

7020. The board shall maintain a computerized enforcement tracking system for consumer complaints.

(Amended by Stats. 1991, Chapter 1160 (AB 2190).)

Studies and Reviews; Reports to Legislature

7021. The board shall conduct the following studies and reviews, and shall report to the department and the Legislature no later than October 1, 2001.

(a) The board shall conduct a comprehensive study of the issues surrounding home improvement contracts that involve home equity lending fraud and scams, and provide recommendations to deal with this problem.

(b) The board shall conduct a comprehensive study of its reorganization ("reengineering") plan to restructure intake, mediation, and investigation services, and evaluate the impact this effort has had on consumer and industry access to board staff, its ability to reduce timeframes for complaint processing and investigations, increasing mediations, investigations, and legal actions, productivity of staff, and overall costs to the board.

(c) The board shall conduct a comprehensive study and review of recovery fund programs in California and other states which provide compensation to consumers for financial injury caused by a licensed professional. It should evaluate the effectiveness of these programs and whether such a recovery fund could benefit consumers who are harmed as a result of contractor fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts.

(d) The board shall conduct a comprehensive study in consultation with the Department of Insurance, on the use of surety bonds to compensate homeowners for financial injury sustained as a result of a contractor's fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts. This study shall include consideration of the payout criteria of bonds, increasing the bond amount, a "step-bonding" approach based on the amount of the prime contract, and the requirement of performance or payment bonds. This study shall additionally consider whether to require contractors to carry general liability insurance and whether to establish a guarantee program in order to provide the appropriate insurance and bond coverage in connection with a homeowner's employment of a contractor.

(e) The board shall review its current disclosure policy and provide recommended changes.

(Added by Stats. 2000, Chapter 1005 (SB 2029).)

ARTICLE 2. APPLICATION OF CHAPTER

"Person" Defined

7025. "Person" as used in this chapter includes an individual, a firm, copartnership, corporation, association or other organization, or any combination of any thereof.

"Contractor" Defined

7026. "Contractor," for the purposes of this chapter, is synonymous with "builder" and, within the meaning of this chapter, a contractor is any person, who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or herself or by or through others, construct, alter, repair, add

to, subtract from, improve, move, wreck or demolish any building, highway, road, parking facility, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, or the cleaning of grounds or structures in connection therewith, or the preparation and removal of roadway construction zones, lane closures, flagging, or traffic diversions, or the installation, repair, maintenance, or calibration of monitoring equipment for underground storage tanks, and whether or not the performance of work herein described involves the addition to, or fabrication into, any structure, project, development or improvement herein described of any material or article of merchandise. "Contractor" includes subcontractor and specialty contractor. "Roadway" includes, but is not limited to, public or city streets, highways, or any public conveyance.

(Amended by Stats. 1999, Chapter 708 (AB 1206); Stats. 2001, Chapter 728 (SB 724).)

"Contractor" Includes Maintenance and Service

7026.1. The term "Contractor" includes:

(a) Any person not exempt under Section 7053 who maintains or services air-conditioning, heating, or refrigeration equipment that is a fixed part of the structure to which it is attached.

(b) Any person, consultant to an owner-builder, firm, association, organization, partnership, business trust, corporation, or company, who or which undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid, to construct any building or home improvement project, or part thereof.

(c) Any person not otherwise exempt by this chapter, who performs tree removal, tree pruning, stump removal, or engages in tree or limb cabling or guying. The term contractor does not include a person performing the activities of a nurseryman who in the normal course of routine work performs incidental pruning of trees, or guying of planted trees and their limbs. The term contractor does not include a gardener who in the normal course of routine work performs incidental pruning of trees measuring less than 15 feet in height after planting.

(d) Any person engaged in the business of drilling, digging, boring, or otherwise constructing, deepening, repairing, re-perforating, or abandoning any water well, cathodic protection well, or monitoring well.

(Amended by Stats. 1991, Chapter 1160 (AB 2190).)

"Contractor"; Mobilehome

7026.2. (a) For the purposes of this chapter, "contractor" includes any person engaged in the business of the construction, installation, alteration, repair, or preparation for moving of a mobilehome or mobilehome accessory buildings and structures upon a site for the purpose of occupancy as a dwelling.

(b) "Contractor" does not include the manufacturer of the mobilehome or mobilehome accessory building or structure if it is constructed at a place other than the site

upon which it is installed for the purpose of occupancy as a dwelling, and does not include the manufacturer when the manufacturer is solely performing work in compliance with the manufacturer's warranty. "Contractor" includes the manufacturer if the manufacturer is engaged in onsite construction, alteration, or repair of a mobilehome or mobilehome accessory buildings and structures pursuant to specialized plans, specifications, or models, or any work other than in compliance with the manufacturer's warranty.

(c) "Contractor" does not include a seller of a manufactured home or mobilehome who holds a retail manufactured home or mobilehome dealer's license under Chapter 7 (commencing with Section 18045) of Part 2 of Division 13 of the Health and Safety Code, if the installation of the manufactured home or mobilehome is to be performed by a licensed contractor and the seller certifies that fact in writing to the buyer prior to the performance of the installation. The certification shall include the name, business address, and contractor's license number of the licensed contractor by whom the installation will be performed.

(d) For the purposes of this chapter, the following terms have the following meanings:

(1) "Mobilehome" means a vehicle defined in Section 18008 of the Health and Safety Code.

(2) "Mobilehome accessory building or structure" means a building or structure defined in Section 18008.5 of the Health and Safety Code.

(3) "Manufactured home" means a structure defined in Section 18007 of the Health and Safety Code.

(Former Section 7026.2 repealed by Stats. 1991, Chapter 1160. Formerly Section 7027 renumbered and amended by Stats. 1991, Chapter 1160 (AB 2190).)

See California Water Code Section 13750.5, License Required for Water Wells, in the Appendix.

"Contractor"; Carpet

7026.3. For the purpose of this chapter, "contractor" includes any person who installs or contracts for the installation of carpet wherein the carpet is attached to the structure by any conventional method as determined by custom and usage in the trade; except that a seller of installed carpet who holds a retail furniture dealer's license under Chapter 3 (commencing with Section 19000) of Division 8 shall not be required to have a contractor's license if the installation of the carpet is performed by a licensed contractor and the seller so certifies in writing to the buyer prior to the performance of the installation, which certification shall include the name, business address, and contractor's license number of the licensed contractor by whom the installation will be performed.

(Former Section 7026.3 repealed by Stats. 1991, Chapter 1160. New Section 7026.3 added by Stats. 1991, Chapter 1160 (AB 2190).)

Fire Protection Systems; Installations; Fire Protection Contractor Classification

7026.12. The installation of a fire protection system, excluding an electrical alarm system, shall be performed only by a contractor holding a fire protection contractor

classification as defined in the regulations of the board or by an owner-builder of an owner-occupied, single-family dwelling, if not more than two single-family dwellings on the same parcel are constructed within one year, plans are submitted to and approved by the city, county, or city and county authority, and the city, county, or city and county authority inspects and approves the installation.

(Amended by Stats. 1994, Chapter 185 (AB 2646).)

Advertising

7027. Any person who advertises or puts out any sign or card or other device after the effective date of this section which would indicate to the public that he or she is a contractor, or who causes his or her name or business name to be included in a classified advertisement or directory after the effective date of this section under a classification for construction or work of improvement covered by this chapter is subject to the provisions of this chapter regardless of whether his or her operations as a builder are otherwise exempted.

Advertising; Penalty

7027.1. (a) It is a misdemeanor for any person to advertise for construction or work of improvement covered by this chapter unless that person holds a valid license under this chapter in the classification so advertised, except that a licensed building or engineering contractor may advertise as a general contractor.

(b) "Advertise," as used in this section, includes, but not by way of limitation, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing of any sign or marking on or in any building or structure, or in any newspaper, magazine, or by airwave or any electronic transmission, or in any directory under a listing for construction or work of improvement covered by this chapter, with or without any limiting qualifications.

(c) A violation of this section is punishable by a fine of not less than seven hundred dollars (\$ 700) and not more than one thousand dollars (\$ 1,000), which fine shall be in addition to any other punishment imposed for a violation of this section.

(d) If upon investigation, the registrar has probable cause to believe that an unlicensed individual is in violation of this section, the registrar may issue a citation pursuant to Section 7028.7 or 7099.10.

Advertisements; Unlicensed Persons

7027.2. Notwithstanding any other provision of this chapter, any person not licensed pursuant to this chapter may advertise for construction work or work of improvement covered by this chapter, provided that he or she shall state in the advertisement that he or she is not licensed under this chapter.

Incorrect License Number; Penalty for Use

7027.3. Any person, licensed or unlicensed, who willfully and intentionally uses, with intent to defraud, a contractor's license number that does not correspond to the number on a currently valid contractor's license held by that person, is punishable by a fine not exceeding ten thousand dollars

(\$10,000), or by imprisonment in state prison, or in county jail for not more than one year, or by both that fine and imprisonment. The penalty provided by this section is cumulative to the penalties available under all other laws of this state. If, upon investigation, the registrar has probable cause to believe that an unlicensed individual is in violation of this section, the registrar may issue a citation pursuant to Section 7028.7.

(Formerly Section 7026.10, renumbered and amended by Stats. 1991, Chapter 1160 (AB 2190); Amended by Stats. 2001, Chapter 728 (SB 724).)

Landscape Contractor; Design Authority

7027.5. A landscape contractor working within the classification for which the license is issued may design systems or facilities for work to be performed and supervised by that contractor.

Contracting Without License; Second and Subsequent Offenses; Limitation of Actions

7028. (a) It is a misdemeanor for any person to engage in the business or act in the capacity of a contractor within this state without having a license therefor, unless such person is particularly exempted from the provisions of this chapter.

(b) If such a person has been previously convicted of the offense described in this section, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contracting work, or four thousand five hundred dollars (\$ 4,500), whichever is greater, or imprisonment in the county jail for not less than 10 days nor more than six months, or both.

(c) In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, "the price of the contract" for the purposes of this section means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(d) Notwithstanding any other provision of law to the contrary, an indictment for any violation of this section by the unlicensed contractor shall be found or an information or complaint filed within four years from the date of the contract proposal, contract, completion, or abandonment of the work, whichever occurs last.

Failure to Obtain Required Asbestos Certification; Fines and Penalties

7028.1. It is a misdemeanor for any contractor to perform or engage in asbestos-related work, as defined in Section 6501.8 of the Labor Code, without certification pursuant to Section 7058.5 of this code, or to perform or engage in a removal or remedial action, as defined in subdivision (d) of Section 7058.7, or, unless otherwise exempted by this chapter, to bid for the installation or removal of, or to install or remove, an underground storage tank, without certification pursuant to Section 7058.7. A contractor in violation of this section is subject to one of the following penalties:

(a) Conviction of a first offense is punishable by a fine of not less than one thousand dollars (\$ 1,000) or more than

three thousand dollars (\$ 3,000), and by possible revocation or suspension of any contractor's license.

(b) Conviction of a subsequent offense requires a fine of not less than three thousand dollars (\$ 3,000) or more than five thousand dollars (\$ 5,000), or imprisonment in the county jail not exceeding one year, or both the fine and imprisonment, and a mandatory action to suspend or revoke any contractor's license.

Criminal Complaints; Payment of Penalties

7028.2. A criminal complaint pursuant to this chapter may be brought by the Attorney General or by the district attorney or prosecuting attorney of any city, in any county in the state with jurisdiction over the contractor or employer, by reason of the contractor's or employer's act, or failure to act, within that jurisdiction. Any penalty assessed by the court shall be paid to the office of the prosecutor bringing the complaint.

Injunction Proceedings

7028.3. In addition to all other remedies, when it appears to the registrar, either upon complaint or otherwise, that a licensee has engaged in, or is engaging in, any act, practice, or transaction which constitutes a violation of this chapter whereby another person may be substantially injured, or that any person, who does not hold a state contractor's license in any classification, has engaged in, or is engaging in, any act, practice, or transaction which constitutes a violation of this chapter, whether or not there is substantial injury, the registrar may, either through the Attorney General or through the district attorney of the county in which the act, practice, or transaction is alleged to have been committed, apply to the superior court of that county or any other county in which such person maintains a place of business or resides, for an injunction restraining such person from acting in the capacity of a contractor without a license in violation of this chapter, or from acting in violation of this chapter when another person may be substantially injured, and, upon a proper showing, a temporary restraining order, a preliminary injunction, or a permanent injunction shall be granted.

Injunction Against Nonlicensee

7028.4. In addition to the remedies set forth in Section 7028.3, on proper showing by (1) a licensed contractor, or an association of contractors, (2) a consumer affected by the violation, (3) a district attorney, or (4) the Attorney General, of a continuing violation of this chapter by a person who does not hold a state contractor's license in any classification, an injunction shall issue by a court specified in Section 7028.3 at the request of any such party, prohibiting such violation. The plaintiff in any such action shall not be required to prove irreparable injury.

Individual Licenses

7028.5. It is unlawful for any person who is or has been a member, officer, director or responsible managing officer of a licensed copartnership, corporation, firm, association or other organization to individually engage in the business or individually act in the capacity of a contractor within this State without having a license in good standing to so engage or act.

Citations Containing Orders of Abatement and Civil Penalties; Nonlicensure

7028.6. The Registrar of Contractors is hereby empowered to issue citations containing orders of abatement and civil penalties against persons acting in the capacity of or engaging in the business of a contractor within this state without having a license in good standing to so act or engage or a failure to maintain the notice required in Section 7048.

Citation for Nonlicensure; Order of Abatement; Civil Penalty; Procedures; Regulations

7028.7. If upon inspection or investigation, either upon complaint or otherwise, the registrar has probable cause to believe that a person is acting in the capacity of or engaging in the business of a contractor or salesperson within this state without having a license or registration in good standing to so act or engage, and the person is not otherwise exempted from this chapter, the registrar shall issue a citation to that person. Within 72 hours of receiving notice that a public entity is intending to award, or has awarded, a contract to an unlicensed contractor, the registrar shall give written notice to the public entity that a citation may be issued if a contract is awarded to an unlicensed contractor. If after receiving the written notice from the registrar that the public entity has awarded or awards the contract to an unlicensed contractor the registrar may issue a citation to the responsible officer or employee of the public entity as specified in Section 7028.15. Each citation shall be in writing and shall describe with particularity the basis of the citation. Each citation shall contain an order of abatement and an assessment of a civil penalty in an amount not less than two hundred dollars (\$200) nor more than fifteen thousand dollars (\$15,000). With the approval of the Contractors State License Board the registrar shall prescribe procedures for the issuance of a citation under this section. The Contractors' State License Board shall adopt regulations covering the assessment of a civil penalty which shall give due consideration to the gravity of the violation, and any history of previous violations. The sanctions authorized under this section shall be separate from, and in addition to, all other remedies either civil or criminal.

(Amended by Stats. 1991, Chapter 785 (AB 800); Stats. 1992, Chapter 606 (AB 3240); Stats. 2001 Chapter 728 (SB 724).)

Service of Citation

7028.8. Service of a citation issued under Section 7028.7 may be made by certified mail at the last known business address or residence address of the person cited.

Time for Issuance of Citation

7028.9. A citation under Section 7028.7 shall be issued by the registrar within four years after the act or omission that is the basis for the citation.

(Amended by Stats. 1996, Chapter 145 (AB 2958).)

Appeal of Citation

7028.10. Any person served with a citation under Section 7028.7 may appeal to the registrar within 15 working days

after service of the citation with respect to violations alleged, scope of the order of abatement, or amount of civil penalty assessed.

Finality of Citation; Time Period for Notice of Intent to Appeal

7028.11. If within 15 working days after service of the citation, the person cited fails to notify the registrar that he or she intends to appeal the citation, the citation shall be deemed a final order of the registrar and not subject to review by any court or agency. The 15-day period may be extended by the registrar for good cause.

Hearing on Citation; Issuance of Decision; Procedure

7028.12. If the person cited under Section 7028.7 timely notifies the registrar that he or she intends to contest the citation, the registrar shall afford an opportunity for a hearing. The registrar shall thereafter issue a decision, based on findings of fact, affirming, modifying, or vacating the citation or directing other appropriate relief. The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the registrar shall have all the powers granted therein.

Judgment for Amount of Civil Penalty; Order for Compliance with Order of Abatement; Application

7028.13. (a) After the exhaustion of the review procedures provided for in Sections 7028.10 to 7028.12, inclusive, the registrar may apply to the appropriate superior court for a judgment in the amount of the civil penalty and an order compelling the cited person to comply with the order of abatement. The application, which shall include a certified copy of the final order of the registrar, shall constitute a sufficient showing to warrant the issuance of the judgment and order. If the cited person did not appeal the citation, a certified copy of the citation and proof of service, and a certification that the person cited is not or was not a licensed contractor or applicant for a license at the time of issuance of the citation, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(b) Notwithstanding any other provision of law, the registrar may delegate the collection of the civil penalty for any citation issued to any person or entity legally authorized to engage in collections. Costs of collection shall be borne by the person cited. The registrar shall not delegate the authority to enforce the order of abatement.

(c) Notwithstanding any other provision of law the registrar shall have the authority to assign the rights to the civil penalty, or a portion thereof, for adequate consideration. The assignee and the registrar shall have all the rights afforded under the ordinary laws of assignment of rights and delegation of duties. The registrar shall not assign the order of abatement. The assignee may apply to the appropriate superior court for a judgment based upon the assigned rights upon the same evidentiary showing as set forth in subdivision (a).

(d) Notwithstanding any other provision of law, including

subdivisions (1) and (2) of Section 340 of the Code of Civil Procedure, the registrar or his or her designee or assignee shall have four years from the date of the final order to collect civil penalties except that the registrar or his or her designee or assignee shall have 10 years from the date of the judgment to enforce civil penalties on citations that have been converted to judgments through the process described in subdivisions (a) and (c).

(Amended by Stats. 2001, Chapter 728 (SB 724).)

Waiver of Part of Civil Penalty

7028.14. Notwithstanding any other provision of the law, the registrar may waive part of the civil penalty if the person against whom the civil penalty is assessed satisfactorily completes all the requirements for, and is issued, a contractor's license. Any outstanding injury to the public shall be satisfactorily settled prior to issuance of the license.

Submission of Bid to Public Agency without a License: Misdemeanor

7028.15. (a) It is a misdemeanor for any person to submit a bid to a public agency in order to engage in the business or act in the capacity of a contractor within this state without having a license therefor, except in any of the following cases:

- (1) The person is particularly exempted from this chapter.
- (2) The bid is submitted on a state project governed by Section 10164 of the Public Contract Code or on any local agency project governed by Section 20103.5 of the Public Contract Code.
- (b) If a person has been previously convicted of the offense described in this section, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contracting work, or four thousand five hundred dollars (\$4,500), whichever is greater, or imprisonment in the county jail for not less than 10 days nor more than six months, or both.

In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, "the price of the contract" for the purposes of this subdivision means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

- (c) This section shall not apply to a joint venture license, as required by Section 7029.1. However, at the time of making a bid as a joint venture, each person submitting the bid shall be subject to this section with respect to his or her individual licensure.
- (d) This section shall not affect the right or ability of a licensed architect, land surveyor, or registered professional engineer to form joint ventures with licensed contractors to render services within the scope of their respective practices.
- (e) Unless one of the foregoing exceptions applies, a bid submitted to a public agency by a contractor who is not licensed in accordance with this chapter shall be considered nonresponsive and shall be rejected by the public

agency. Unless one of the foregoing exceptions applies, a local public agency shall, before awarding a contract or issuing a purchase order, verify that the contractor was properly licensed when the contractor submitted the bid. Notwithstanding any other provision of law, unless one of the foregoing exceptions applies, the registrar may issue a citation to any public officer or employee of a public entity who knowingly awards a contract or issues a purchase order to a contractor who is not licensed pursuant to this chapter. The amount of civil penalties, appeal, and finality of such citations shall be subject to Sections 7028.7 to 7028.13, inclusive. Any contract awarded to, or any purchase order issued to, a contractor who is not licensed pursuant to this chapter is void.

(f) Any compliance or noncompliance with subdivision (e) of this section, as added by Chapter 863 of the Statutes of 1989, shall not invalidate any contract or bid awarded by a public agency during which time that subdivision was in effect.

(g) A public employee or officer shall not be subject to a citation pursuant to this section if the public employee, officer, or employing agency made an inquiry to the board for the purposes of verifying the license status of any person or contractor and the board failed to respond to the inquiry within three business days. For purposes of this section, a telephone response by the board shall be deemed sufficient.

See Public Contract Code Section 10164, License Required for Award of Contract on State Project; 10262 Payment to Subcontractors, and 20103.5, Public Works Contracts: Bidder or Contract Not Licensed; Penalties, in Appendix.

State of Emergency; Acting as Contractor Without License; Penalty

7028.16. Any person who engages in the business or act in the capacity of a contractor, without having a license therefor, in connection with the offer or performance of repairs to a residential or nonresidential structure for damage caused by a natural disaster for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States, shall be punished by a fine up to ten thousand dollars (\$10,000), or by imprisonment in the state prison for 16 months, or for two or three years, or by both the fine and imprisonment, or by a fine up to one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding one year, or by both the fine and imprisonment..

See Penal Code Sections 670, State of Emergency; Fraud of Owners or Lessees of Residential Structures; Penalties; 667.16, Enhanced Sentence for Fraud in Repairing Natural Disaster Damage; 551, Insurance Fraud, in Appendix.

Unlicensed Contractor; Penalty for Failure to Comply with Citation

7028.17. (a) The failure of an unlicensed individual to comply with a citation after it is final is a misdemeanor.

(b) Notwithstanding Section 1462.5 or 1463 of the Penal Code or any other provision of law, any fine collected

upon conviction in a criminal action brought under this section shall be distributed as follows:

- (1) If the action is brought by a district attorney, any fine collected shall be paid to the treasurer of the county in which the judgment was entered to be designated for use by the district attorney.
- (2) If the action is brought by a city attorney or city prosecutor, any fine collected shall be paid to the treasurer of the city in which the judgment was entered, to be designated for use by the city attorney.

Joint Venture License Defined; Suspension

7029. A joint venture license is a license issued to any combination of individuals, corporations, partnerships, or other joint ventures, each of which holds a current, active license in good standing. A joint venture license may be issued in any classification in which at least one of the entities is licensed. An active joint venture license shall be automatically suspended by operation of law during any period in which any member of the entity does not hold a current, active license in good standing.

Contracting Jointly Without Joint License; Effect

7029.1. It is unlawful for any two or more licensees, each of whom has been issued a license to act separately in the capacity of a contractor within this state, to be awarded a contract jointly or otherwise act as a contractor without first having secured a joint venture license in accordance with the provisions of this chapter as provided for an individual, partnership or corporation. Any violation of this section shall also constitute a cause for disciplinary action. If a combination of licensees submit a bid for the performance of work for which a joint venture license is required, a failure to obtain that license shall not prevent the imposition of any penalty specified by law for the failure of a contractor who submits a bid to enter into a contract pursuant to the bid.

Plumbing, Electrical Sign and Well-Drilling Contractors; Identification on Vehicle

7029.5. Every plumbing contractor, electrical sign contractor, and well-drilling contractor licensed under this chapter shall have displayed on each side of each motor vehicle used in his or her business, for which a commercial vehicle registration fee has been paid pursuant to Article 3 (commencing with Section 9400) of Chapter 6 of Division 3 of the Vehicle Code, his or her name, permanent business address, and contractor's license number, all in letters and numerals not less than 1 1/2 inches high.

The identification requirements of this section shall also apply to any drill rig used for the drilling of water wells. Failure to comply with this section constitutes a cause for disciplinary action.

Statement Required on Contracts

7030. (a) Every person licensed pursuant to this chapter shall include the following statement in at least 10-point type on all written contracts with respect to which the person is a prime contractor:

"Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826."

(b) At the time of making a bid or prior to entering into a contract to perform work on residential property with four or fewer units, whichever occurs first, a contractor shall provide the following notice in capital letters in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type:

"STATE LAW REQUIRES ANYONE WHO CONTRACTS TO DO CONSTRUCTION WORK TO BE LICENSED BY THE CONTRACTORS' STATE LICENSE BOARD IN THE LICENSE CATEGORY IN WHICH THE CONTRACTOR IS GOING TO BE WORKING—IF THE TOTAL PRICE OF THE JOB IS \$ 500 OR MORE (INCLUDING LABOR AND MATERIALS).

LICENSED CONTRACTORS ARE REGULATED BY LAWS DESIGNED TO PROTECT THE PUBLIC. IF YOU CONTRACT WITH SOMEONE WHO DOES NOT HAVE A LICENSE, THE CONTRACTORS' STATE LICENSE BOARD MAY BE UNABLE TO ASSIST YOU WITH A COMPLAINT. YOUR ONLY REMEDY AGAINST AN UNLICENSED CONTRACTOR MAY BE IN CIVIL COURT, AND YOU MAY BE LIABLE FOR DAMAGES ARISING OUT OF ANY INJURIES TO THE CONTRACTOR OR HIS OR HER EMPLOYEES.

YOU MAY CONTACT THE CONTRACTORS' STATE LICENSE BOARD TO FIND OUT IF THIS CONTRACTOR HAS A VALID LICENSE. THE BOARD HAS COMPLETE INFORMATION ON THE HISTORY OF LICENSED CONTRACTORS, INCLUDING ANY POSSIBLE SUSPENSIONS, REVOCATIONS, JUDGMENTS, AND CITATIONS. THE BOARD HAS OFFICES THROUGHOUT CALIFORNIA. PLEASE CHECK THE GOVERNMENT PAGES OF THE WHITE PAGES FOR THE OFFICE NEAREST YOU OR CALL 1-800-321-CSLB FOR MORE INFORMATION."

(c) Failure to comply with the notice requirements set forth in subdivision (a) or (b) of this section is cause for disciplinary action.

Disclosure

7030.1 (a) A contractor, who has his or her license suspended or revoked two or more times within an eight-year period, shall disclose either in capital letters in 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type, in a document provided prior to entering into a contract to perform work on residential property with four or fewer units, any disciplinary license suspension, or license revocation during the last eight years resulting from any violation of this chapter by the contrac-

tor, whether or not the suspension or revocation was stayed.

(b) The disclosure notice required by this section may be provided in a bid, estimate, or other document prior to entering into a contract.

(c) A violation of this section is subject to the following penalties:

(1) A penalty of one thousand dollars (\$ 1,000) shall be assessed for the first violation.

(2) A penalty of two thousand five hundred dollars (\$2,500) shall be assessed for the second violation.

(3) A penalty of five thousand dollars (\$ 5,000) shall be assessed for a third violation in addition to a one-year suspension of license by operation of law.

(4) A fourth violation shall result in the revocation of license in accordance with this chapter.

License Number Required on All Contracts, etc.

7030.5. Every person licensed pursuant to this chapter shall include his license number in: (a) all construction contracts; (b) subcontracts and calls for bid; and (c) all forms of advertising, as prescribed by the registrar of contractors, used by such a person.

Proof of Licensure; Compensation Prohibited

7031. (a) Except as provided in subdivision (e), no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required by this chapter without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person, except that this prohibition shall not apply to contractors who are each individually licensed under this chapter but who fail to comply with Section 7029.

(b) A person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in the state to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

(c) A security interest taken to secure any payment for the performance of any act or contract for which a license is required by this chapter is unenforceable if the person performing the act or contract was not a duly licensed contractor at all times during the performance of the act or contract.

(d) If licensure or proper licensure is controverted, then proof of licensure pursuant to this section shall be made by production of a verified certificate of licensure from the Contractors' State License Board which establishes that the individual or entity bringing the action was duly licensed in the proper classification of contractors at all times during the performance of any act or contract covered by the action. Nothing herein shall require any person or entity controverting licensure or proper licensure

to produce a verified certificate. When licensure or proper licensure is controverted, the burden of proof to establish licensure or proper licensure shall be on the licensee.

(e) The judicial doctrine of substantial compliance shall not apply under this section where the person who engaged in the business or acted in the capacity of a contractor has never been a duly licensed contractor in this state. However, the court may determine that there has been substantial compliance with licensure requirements under this section if it is shown at an evidentiary hearing that the person who engaged in the business or acted in the capacity of a contractor (1) had been duly licensed as a contractor in this state prior to the performance of the act or contract, (2) acted reasonably and in good faith to maintain proper licensure, and (3) did not know or reasonably should not have known that he or she was not duly licensed. Subdivision (b) of Section 143 does not apply to contractors subject to this subdivision.

(f) The exceptions to the prohibition against the application of the judicial doctrine of substantial compliance found in subdivision (d) shall apply to all contracts entered into on or after January 1, 1992, and to all actions or arbitrations arising therefrom, except that the amendments to subdivisions (d) and (e) enacted during the 1994 portion of the 1993—94 Regular Session of the Legislature shall not apply to either of the following:

(1) Any legal action or arbitration commenced prior to January 1, 1995, regardless of the date on which the parties entered into the contract.

(2) Any legal action or arbitration commenced on or after January 1, 1995, if the legal action or arbitration was commenced prior to January 1, 1995, and was subsequently dismissed.

License Required for Construction Permit

7031.5. Each county or city which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition or repair of any building or structure shall also require that each applicant for such a permit file as a condition precedent to the issuance of a permit a statement which he has prepared and signed stating that the applicant is licensed under the provisions of this chapter, giving the number of the license and stating that it is in full force and effect, or, if the applicant is exempt from the provisions of this chapter, the basis for the alleged exemption.

Any violation of this section by any applicant for a permit shall be subject to a civil penalty of not more than five hundred dollars (\$500).

City or County Permits

7032. Nothing in this chapter shall limit the power of a city or county to regulate the quality and character of installations made by contractors through a system of permits and inspections which are designed to secure compliance with and aid in the enforcement of applicable state and local building laws, or to enforce other local laws necessary for the protection of the public health and safety. Nothing in this chapter shall limit the power of a city or county to adopt any system of permits requiring submis-

sion to and approval by the city or county of plans and specifications for an installation prior to the commencement of construction of the installation.

Cities or counties may direct complaints to the registrar against licensees based upon determinations by city or county enforcement officers of violations by such licensees of codes the enforcement of which is the responsibility of the complaining city or county. Such complaints shall to the extent determined to be necessary by the registrar be given priority in processing over other complaints. Nothing contained in this section shall be construed as authorizing a city or county to enact regulations relating to the qualifications necessary to engage in the business of contracting.

City or County Business Licenses

7033. Every city or city and county which requires the issuance of a business license as a condition precedent to engaging, within the city or city and county, in a business which is subject to regulation under this chapter, shall require that each licensee and each applicant for issuance or renewal of such license shall file, or have on file, with such city or city and county, a signed statement that such licensee or applicant is licensed under the provisions of this chapter and stating that the license is in full force and effect, or, if such licensee or applicant is exempt from the provisions of this chapter, he shall furnish proof of the facts which entitle him to such exemption.

See Government Code Section 37101.7, Licensing for Revenue by Cities, in Appendix.

Prohibited Clauses; Waiver of Lien Rights

7034. (a) No contractor who is required to be licensed under this chapter shall insert in any contract, or be a party, with a subcontractor who is licensed under this chapter to any contract which contains, a provision, clause, covenant, or agreement which is void or unenforceable under Section 2782 of the Civil Code.

(b) No contractor who is required to be licensed under this chapter shall require a waiver of lien rights from any subcontractor, employee, or supplier in violation of Section 3262 of the Civil Code.

See Civil Code Sections 2782 Construction Contracts; Invalidity of Provisions to Indemnify Promisee Against Liability; Exceptions and 2782.6 Exception for Professional Engineer or Geologist; "Hazardous Materials" Defined, in Appendix.

ARTICLE 3. EXEMPTIONS

Public Personnel

7040. (a) This chapter does not apply to an authorized representative of the United States government, the State of California, or any incorporated town, city, county, irrigation district, reclamation district or other municipal or political corporation or subdivision of this state when the entity or its representative is acting within the scope of the entity's or representative's official capacity.

(b) Nothing in this section authorizes the entity or its authorized representative thereof either to enter into or

authorize a contract with an unlicensed contractor for work which is required by this chapter to be performed by a licensed contractor.

See Public Contract Code Section 6100 License Required for Award of Contract, in Appendix.

Court Officers

7041. This chapter does not apply to officers of a court when they are acting within the scope of their office.

Public Utilities

7042. This chapter does not apply to public utilities operating under the regulation of the State Railroad Commission on construction, maintenance and development work incidental to their own business.

Gas, Heat or Electrical Corporations Regulated as Public Utilities, Conditions for Exemption from Licensure

7042.1. (a) Notwithstanding any other provisions of this chapter, gas heat, or electrical corporations and their subsidiaries that are regulated as public utilities by the Public Utilities Commission shall not conduct work for which a contractor's license is required, except under any one or more of the following conditions:

(1) The work is performed upon the gas, heat, or electrical corporation's properties.

(2) The work is performed through a contract with a contractor or contractors licensed pursuant to this chapter or the work is performed for low-income citizens pursuant to a program authorized by order of the Public Utilities Commission.

(3) The work is undertaken by the gas, heat, or electrical corporation in furtherance of the generation, transmission, or distribution of electricity, gas, or steam, whether within or without the service area of the corporation, if any work performed within a structure and beyond a customer's utility meter is necessary to protect the public safety or to avoid interruption of service.

(4) The work is otherwise exempt from the provisions of this chapter.

(5) The work is performed to comply with programs or procedures ordered or authorized by the Public Utilities Commission not inconsistent with the objectives expressed in Chapter 984 of the Statutes of 1983.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Gas, heat, or electrical corporation properties" means properties which a gas, heat, or electrical corporation owns or leases, or over which it has been granted an easement for utility purposes, or facilities which a gas, heat, or electrical corporation owns or operates for utility purposes.

(2) "Subsidiaries" means subsidiaries of a gas, heat, or electrical corporation regulated as public utilities by the Public Utilities Commission which carry out activities solely for utility purposes.

(c) It is the intention of the Legislature in enacting this

section that public utility regulations be clearly based on the principle that the energy conservation industry should be allowed to develop in a competitive manner, as declared in Chapter 984 of the Statutes of 1983.

See Labor Code Section 3099 Electrician Competency and Training Standards, in Appendix.

Public Utilities Operating Under Regulation of Public Utilities Commission on Construction, Maintenance, and Development Work Incidental to Own Business; Activities of Cable Television Corporation Subject to Regulation Under Sec. 768.5; Duration of Section

7042.5. This chapter does not apply to public utilities operating under the regulation of the Public Utilities Commission on construction, maintenance, and development work incidental to their own business, or to those activities of a cable television corporation subject to regulation pursuant to Section 768.5 of the Public Utilities Code, except underground trenching by a cable television corporation within the public streets, other than that necessary solely for the connection of its distribution system to, or within the properties of, subscribers or potential subscribers.

As used in this section, a cable television corporation is a corporation or person that transmits television programs by cable to subscribers for a fee.

Oil and Gas Operations

7043. This chapter does not apply to any construction, repair or operation incidental to the discovering or producing of petroleum or gas, or the drilling, testing, abandoning or other operation of any petroleum or gas well, when performed by an owner or lessee.

Owner Doing Own Work or Having Employees With Wages as Sole Compensation; Owner Having Licensed Contractors; Improvement of Residence by Homeowner; Presumptions; Injunctions; Discipline; Violations of Sec. 7028

7044. This chapter does not apply to any of the following:

(a) An owner of property, building or improving structures thereon, or appurtenances thereto, who does the work himself or herself or through his or her own employees with wages as their sole compensation, provided none of the structures, with or without the appurtenances thereto, are intended or offered for sale.

(b) An owner of property, building or improving structures thereon, or appurtenances thereto, who contracts for such a project with a subcontractor or subcontractors licensed pursuant to this chapter.

However, this exemption shall apply to the construction of single-family residential structures only if four or fewer of these structures are intended or offered for sale in a calendar year. This limitation shall not apply if the owner of property contracts with a general contractor for the construction.

(c) A homeowner improving his or her principal place of residence or appurtenances thereto, provided that all of the following conditions exist:

(1) The work is performed prior to sale.

(2) The homeowner has actually resided in the residence for the 12 months prior to completion of the work.

(3) The homeowner has not availed himself or herself of the exemption in this subdivision on more than two structures more than once during any three-year period.

In all actions brought under this chapter, proof of the sale or offering for sale of any such structure by the owner-builder within one year after completion of same constitutes a rebuttable presumption affecting the burden of proof that such structure was undertaken for purposes of sale. Except as otherwise provided in this section, proof of the sale or offering for sale of five or more structures by the owner-builder within one year after completion constitutes a conclusive presumption that the structures were undertaken for purposes of sale.

In addition to all other remedies, any (1) licensed contractor, or association of contractors, (2) labor organization, (3) consumer affected by the violation, (4) district attorney, or (5) the Attorney General, shall be entitled to seek injunctive relief prohibiting any violation of this chapter by an owner-builder who is neither licensed nor exempted from licensure by this section or any other section according to the provisions specified in Section 7028.3 or Section 7028.4. The plaintiff in any such action shall not be required to prove irreparable injury and shall be entitled to attorneys' fees and all costs incurred in the prosecution of such action, provided the plaintiff is the prevailing party. The defendant in any such action, shall be entitled to attorneys' fees and all costs incurred in the defense against such action, provided the defendant is the prevailing party.

The registrar pursuant to Section 7090 may take disciplinary action as provided in this chapter against any person whenever the grounds or cause for disciplinary action arose upon any project undertaken by him or her as a licensee licensed pursuant to this chapter.

Any person, firm, or corporation which has violated Section 7028 by engaging in contracting work as an owner-builder without having a license or an exemption from licensure under this section or any other section shall not be entitled to become a licensee under this chapter for a period of one year following the violation.

(Amended by Stats. 1988, Chapter 1035.)

Real Estate Licensee Acting Within Scope of License

7044.1. This chapter does not apply to a real estate licensee acting within the course and scope of his or her license pursuant to the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4). However, nothing in this section shall authorize a real estate licensee or a property manager to act in the capacity of a contractor unless licensed by the board.

Inapplicability of Chapter

7044.2. This chapter does not apply to an admitted surety insurer whenever that surety insurer engages a contractor to undertake the completion of a contract on which a

performance or completion bond was issued by the surety insurer, provided all actual construction work is performed by duly licensed contractors.

Finished Products

7045. This chapter does not apply to the sale or installation of any finished products, materials, or articles of merchandise that do not become a fixed part of the structure, nor shall it apply to a material supplier or manufacturer furnishing finished products, materials, or articles of merchandise who does not install or contract for the installation of those items. The term “finished products” shall not include installed carpets or mobilehomes or mobilehome accessory structures, as defined in Section 7026.2.

This chapter shall apply to the installation of home improvement goods, as defined in Section 7151.

Personal Property

7046. This chapter does not apply to any construction, alteration, improvement, or repair of personal property. The term “personal property” shall not include mobilehomes or mobilehome accessory structures as defined in Section 7026.2.

Small Operations

7048. (a) This chapter does not apply to any work or operation on one undertaking or project by one or more contracts, the aggregate contract price which for labor, materials, and all other items, is less than five hundred dollars (\$500), that work or operations being considered of casual, minor, or inconsequential nature.

This exemption does not apply in any case wherein the work of construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than five hundred dollars (\$500) for the purpose of evasion of this chapter or otherwise.

This exemption does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that he or she is a contractor or that he or she is qualified to engage in the business of a contractor.

(b) Any person performing work costing less than five hundred dollars (\$500) who is not licensed under this chapter shall disclose to the purchaser of the work the fact that he or she is not licensed by the Contractors’ State License Board.

At the time of making a bid or prior to entering into a contract to perform work for less than five hundred dollars (\$500), whichever occurs first, the person performing the work shall provide the following notice in capital letters in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type:

“I, (individual’s name), AM NOT LICENSED BY THE CONTRACTORS’ STATE LICENSE BOARD. STATE LAW REQUIRES ANYONE WHO CONTRACTS TO DO CONSTRUCTION WORK TO BE LICENSED BY THE CONTRACTORS’ STATE LICENSE BOARD IN THE LICENSE CATEGORY IN WHICH THE CONTRACTOR IS GOING TO BE WORKING—IF THE TOTAL PRICE OF THE JOB IS \$ 500 OR MORE (INCLUDING LABOR AND MATERIALS).

LICENSED CONTRACTORS ARE REGULATED BY LAWS DESIGNED TO PROTECT THE PUBLIC. IF YOU CONTRACT WITH SOMEONE WHO DOES NOT HAVE A LICENSE, THE CONTRACTORS’ STATE LICENSE BOARD MAY BE UNABLE TO ASSIST YOU WITH A COMPLAINT. YOUR ONLY REMEDY AGAINST AN UNLICENSED CONTRACTOR MAY BE IN CIVIL COURT, AND YOU MAY BE LIABLE FOR DAMAGES ARISING OUT OF ANY INJURIES TO THE CONTRACTOR OR HIS OR HER EMPLOYEES.”

The person performing the work shall maintain for four years a copy of the above notice signed by the purchaser of the work acknowledging receipt of this notice.

The exemption provided by this section does not apply to any person failing to provide the required notice to the purchaser of the work.

This notice need only be provided once to the same purchaser of subsequent work.

Irrigation and Reclamation Districts Exempt; Farming Exempt; Water Wells Not Exempt

7049. This chapter does not apply to any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation districts, or to farming, dairying, agriculture, viticulture, horticulture, or stock or poultry raising, or clearing or other work upon the land in rural districts for fire prevention purposes, except when performed by a licensee under this chapter.

The provisions of this chapter do apply to the business of drilling, digging, boring, or otherwise constructing, deepening, repairing, re-perforating, or abandoning water wells.

Architect, Engineer, Pest Control

7051. This chapter does not apply to a licensed architect or a registered civil or professional engineer acting solely in his or her professional capacity or to a licensed structural pest control operator acting within the scope of his or her license or a licensee operating within the scope of the Geologist and Geophysicist Act.

Suppliers of Materials

7052. This chapter does not apply to any person who only furnishes materials or supplies without fabricating them into, or consuming them in the performance of, the work of the contractor.

Employees

7053. Except as provided in Article 10 (commencing with Section 7150), this chapter does not apply to any person who engages in the activities herein regulated as an

employee who receives wages as his or her sole compensation, does not customarily engage in an independently established business, and does not have the right to control or discretion as to the manner of performance so as to determine the final results of the work performed.

Alarm Company Operators; Application of Licensing Provisions

7054. This chapter does not apply to any person who performs work in the installation, maintenance, monitoring, selling, alteration, or servicing of alarm systems, as defined in subdivision (n) of Section 7590.1, and who holds an alarm company operator's license issued pursuant to Chapter 11.6 (commencing with Section 7590).

Electronic and Appliance Repair Dealers Installing Satellite Antennas; Application of Licensing Provisions

7054.5. The licensing provisions of this chapter do not apply to any person registered under Chapter 20 (commencing with Section 9800) if that person's activities consist only of installing satellite antenna systems on residential structures or property.

See Business & Professions Code Sections 7590.1, Definitions; 5537 Licensed Contractor Exemptions from the Architect Act 5537.2 Exemptions and 6737.5, Exemptions for the Provisions of the Engineers Act, in Appendix.

ARTICLE 4. CLASSIFICATIONS

Classification

7055. For the purpose of classification, the contracting business includes any or all of the following branches:

- (a) General engineering contracting.
- (b) General building contracting.
- (c) Specialty contracting.

General Engineering Contractor

7056. A general engineering contractor is a contractor whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, including the following divisions or subjects: irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, docks and wharves, shipyards and ports, dams and hydroelectric projects, levees, river control and reclamation works, railroads, highways, streets and roads, tunnels, airports and airways, sewers and sewage disposal plants and systems, waste reduction plants, bridges, overpasses, underpasses and other similar works, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, parks, playgrounds and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skill, powerhouses, power plants and other utility plants and installations, mines and metallurgical plants, land leveling and earthmoving projects, excavating, grading, trenching, paving and surfacing work and cement and concrete works in connection with the above mentioned fixed works.

General Building Contractor

7057. (a) Except as provided in this section, a general building contractor is a contractor whose principal contracting business is in connection with any structure built, being built, or to be built, for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind, requiring in its construction the use of at least two unrelated building trades or crafts, or to do or superintend the whole or any part thereof.

This does not include anyone who merely furnishes materials or supplies under Section 7045 without fabricating them into, or consuming them in the performance of the work of the general building contractor.

(b) A general building contractor may take a prime contract or a subcontract for a framing or carpentry project.

However, a general building contractor shall not take a prime contract for any project involving trades other than framing or carpentry unless the prime contract requires at least two unrelated building trades or crafts other than framing or carpentry, or unless the general building contractor holds the appropriate license classification or subcontracts with an appropriately licensed contractor to perform the work. A general building contractor shall not take a subcontract involving trades other than framing or carpentry, unless the subcontract requires at least two unrelated trades or crafts other than framing or carpentry, or unless the general building contractor holds the appropriate license classification. The general building contractor may not count framing or carpentry in calculating the two unrelated trades necessary in order for the general building contractor to be able to take a prime contract or subcontract for a project involving other trades.

(c) No general building contractor shall contract for any project that includes the "C-16" Fire Protection classification as provided for in Section 7026.12 or the "C-57" Well Drilling classification as provided for in Section 13750.5 of the Water Code, unless the general building contractor holds the appropriate license classification, or subcontracts with the appropriately licensed contractor.

(Added Stats 1945 Chapter 1159 § 3; Amended Stats 1997 Chapter 812 § 2 (SB 857); Amended Stats 2002 Chapter 1013 § 60 (SB 2026)).

Specialty Contractor

7058. (a) A specialty contractor is a contractor whose operations involve the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts.

(b) A specialty contractor includes a contractor whose operations include the business of servicing or testing fire extinguishing systems.

(c) A specialty contractor includes a contractor whose operations are concerned with the installation and laying of carpets, linoleum, and resilient floor covering.

(d) A specialty contractor includes a contractor whose operations are concerned with preparing or removing roadway construction zones, lane closures, flagging, or traffic diversions on roadways, including, but not limited

to, public streets, highways, or any public conveyance.

On and after January 1, 2001, no person or entity shall set up or remove roadway construction zones, lane closures, flagging, or traffic diversions on any roadway unless that person or entity holds the appropriate specialty license pursuant to this chapter.

Testing for Specialty Licenses; Exemptions

7058.1. *Repealed Stats 2002, Chapter 1013 (SB 2026).*

Asbestos Certification Examination

7058.5. (a) No contractor shall engage in asbestos-related work, as defined in Section 6501.8 of the Labor Code, which involves 100 square feet or more of surface area of asbestos containing materials, unless the qualifier for the license passes an asbestos certification examination. Additional updated asbestos certification examinations may be required based on new health and safety information. The decision on whether to require an updated certification examination shall be made by the Contractors' State License Board, in consultation with the Division of Occupational Safety and Health in the Department of Industrial Relations and the State Department of Health Services.

No asbestos certification examination shall be required for contractors involved with the installation, maintenance, and repair of asbestos cement pipe or sheets, vinyl asbestos floor materials, or asbestos bituminous or resinous materials. "Asbestos" as used in this section, has the same meaning as defined in Section 6501.7 of the Labor Code.

(b) The Contractors' State License Board shall develop, and deliver to all applicants with the request for bond and fee, a booklet containing information relative to handling and disposal of asbestos, together with an open book examination concerning asbestos-related work. All applicants for an initial contractor's license and all applicants filing a delinquent renewal application who have not previously completed the open book examination shall complete and sign the open book examination and submit it to the Contractors' State License Board with the required renewal or bond and fee.

Asbestos Certification; Registration with Division of Occupational Safety and Health Required

7058.6. (a) The board shall not issue an asbestos certification, as required by Section 7058.5, unless the contractor is registered with the Division of Occupational Safety and Health of the Department of Industrial Relations pursuant to Section 6501.5 of the Labor Code. The board may issue an asbestos certification to a contractor who is not registered, provided the contractor in a written statement acknowledges that he or she does not perform asbestos-related work. The board shall notify both the division and the contractor, in writing, of the contractor's passage of the certification examination, for the purpose of allowing the contractor to satisfy the requirement of paragraph (1) of subdivision (a) of Section 6501.5 of the Labor Code. The contractor shall register with the division within 90 days from the date the contractor is notified of the passage

of the certification examination. The board may require a reexamination if the contractor fails to register within 90 days following issuance of the notification. Applicable test fees shall be paid for any reexamination required under this section.

(b) Any contractor who is certified to engage in asbestos-related work shall present proof of current registration with the division pursuant to Section 6501.5 of the Labor Code upon application for renewal of his or her license, if the contractor engages in asbestos-related work, as defined in Section 6501.8 of the Labor Code.

(c) A contractor who is not certified pursuant to this section may bid on and contract to perform a project involving asbestos-related work as long as the asbestos-related work is performed by a contractor who is certified and registered pursuant to this section and Section 6501.5 of the Labor Code.

(d) The board shall obtain and periodically update the list of contractors certified to engage in asbestos-related work who are registered pursuant to Section 6501.5 of the Labor Code.

Hazardous Substance Removal Certification Examination; Advisory Committee

7058.7. (a) No contractor may engage in a removal or remedial action, as defined in subdivision (d), unless the qualifier for the license has passed an approved hazardous substance certification examination.

(b)(1) The Contractors' State License Board, the Division of Occupational Safety and Health of the Department of Industrial Relations, and the Department of Toxic Substances Control shall jointly select an advisory committee, which shall be composed of two representatives of hazardous substance removal workers in California, two general engineering contractors in California, and two representatives of insurance companies in California who shall be selected by the Insurance Commissioner.

(2) The Contractors' State License Board shall develop a written test for the certification of contractors engaged in hazardous substance removal or remedial action, in consultation with the Division of Occupational Safety and Health, the State Water Resources Control Board, the Department of Toxic Substances Control, and the advisory committee.

(c) The Contractors' State License Board may require additional updated approved hazardous substance certification examinations of licensees currently certified based on new public or occupational health and safety information. The Contractors' State License Board, in consultation with the Department of Toxic Substances Control and the State Water Resources Control Board, shall approve other initial and updated hazardous substance certification examinations and determine whether to require an updated certification examination of all current certificate holders.

(d) For purposes of this section "removal or remedial action" has the same meaning as found in Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, if the action requires the contrac-

tor to dig into the surface of the earth and remove the dug material and the action is at a site listed pursuant to Section 25356 of the Health and Safety Code or any other site listed as a hazardous substance release site by the Department of Toxic Substances Control or a site listed on the National Priorities List compiled pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.). "Removal or remedial action" does not include asbestos-related work, as defined in Section 6501.8 of the Labor Code, or work related to a hazardous substance spill on a highway.

(e)(1) A contractor may not install or remove an underground storage tank, unless the contractor has passed the hazardous substance certification examination developed pursuant to this section.

(2) A contractor who is not certified may bid on or contract for the installation or removal of an underground tank, if the work is performed by a contractor who is certified pursuant to this section.

(3) For purposes of this subdivision, "underground storage tank" has the same meaning as defined in subdivision (y) of Section 25281 of the Health and Safety Code.

(Amended Stats. 2002 Chapter 999 § 1 (AB 2481).)

See Health and Safety Code Section 25281 Definitions in Appendix..

See Labor Code Sections 6501.5 Asbestos Certification, 6501.7 Asbestos: Definitions and 6501.8 Asbestos-Related Work Containing Construction Material, in Appendix.

See also Health and Safety Code Sections 25914 Asbestos and Hazardous Removal Contracts Intent, 25914.1 Definitions, 25914.2 Need for Separate Contract; Emergency Conditions and 25914.3 Certification Requirements: Bids, in Appendix.

Asbestos Information; Availability to Public

7058.8. The board shall make available to the public upon request information about contracting for the removal or encapsulation of asbestos-containing materials in a building including all of the following:

(a) Steps to take when contracting with a company to remove asbestos.

(b) Existing laws and regulations pertaining to asbestos-related work in California.

(c) Basic health information as contained in the United States Environmental Protection Agency publication, "Guidance for Controlling Asbestos-Containing Materials in Buildings."

(d) A current list of contractors who are certified pursuant to Section 7058.5 to engage in asbestos-related work and who are registered pursuant to Section 6501.5 of the Labor Code.

This section shall become operative on July 1, 1989.

Powers to Classify and Limit Operations of a Licensed Contractor; Incidental Work; Specialty Contractors on Public Works Contracts

7059. (a) The board may adopt reasonably necessary rules and regulations to effect the classification of contractors in

a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which he or she is classified and qualified to engage, as defined by Sections 7055, 7056, 7057, and 7058. A licensee may make application for classification and be classified in more than one classification if the licensee meets the qualifications prescribed by the board for such additional classification or classifications. The application shall be in a form as prescribed by the registrar and shall be accompanied by the application fee fixed by this chapter. No license fee shall be charged for an additional classification or classifications.

Nothing contained in this section shall prohibit a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which he or she is licensed, is incidental and supplemental to the performance of the work in the craft for which the specialty contractor is licensed.

(b) In public works contracts, as defined in Section 1101 of the Public Contract Code, the awarding authority shall determine the license classification necessary to bid and perform the project. In no case shall the awarding authority award a prime contract to a specialty contractor whose classification constitutes less than a majority of the project. When a specialty contractor is authorized to bid a project, all work to be performed outside of his or her license specialty, except work authorized by subdivision (a), shall be performed by a licensed subcontractor in compliance with the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code).

Business Name; Compatibility with Classification; One Name per License

7059.1. (a) A licensee shall not use any business name that indicates the licensee is qualified to perform work in classifications other than those issued for that license, or any business name that is incompatible with the type of business entity licensed.

(b) A licensee shall not conduct business under more than one name for each license. Nothing in this section shall prevent a licensee from obtaining a business name change as otherwise provided by this chapter.

(Amended by Stats. 2001, Chapter 728, (SB 724).)

ARTICLE 5. LICENSING

Investigation, Classification and Qualification of Applicants By Examination; Waiver of Examination

7065. Under rules and regulations adopted by the board and approved by the director, the registrar shall investigate, classify, and qualify applicants for contractors' licenses by written examination. This examination shall include questions designed to show that the applicant has the necessary degree of knowledge required by Section 7068 and shall include pertinent questions relating to the laws of this state, and the contracting business and trade.

Contractors' licenses are to be issued to individual owners, copartnerships, and corporations. An individual owner may qualify by examination for a contractor's license upon the appearance of the owner or a qualifying individual appearing as a responsible managing employee on behalf of the owner. A copartnership may qualify by examination for a contractor's license upon the appearance of a copartner or a qualifying individual appearing as a responsible managing employee. A corporation may qualify by examination for a contractor's license upon the appearance of a qualifying individual appearing either as a responsible managing officer or a responsible managing employee. No examination shall be required of a qualifying individual if, within the five-year period immediately preceding the application for licensure, the qualifying individual has either personally passed the written examination for the same classification being applied for, or has served as the qualifying individual for a licensee whose license was in good standing at any time during the five-year period immediately preceding the application for licensure and in the same classification being applied for.

See Government Code Section 12944, Discrimination by "Licensing Board," in Appendix.

Examination Not Required for Limited Specialty License Classification

7065.01. Notwithstanding Section 7065, no trade examination shall be required of an applicant for the limited specialty license classification.

Added Stats 2002 Chapter 311 § 2 (AB 264).

Examination Preparation

7065.05. (a) The board shall periodically review and, if needed, revise the contents of qualifying examinations to insure that the examination questions are timely and relevant to the business of contracting. The board shall, in addition, construct and conduct examinations in such a manner as to preclude the possibility of any applicant having prior knowledge of any specific examination question.

(b) The board shall establish a priority list and schedule for the completion of an occupational analysis of its current examinations. The board shall complete this analysis with respect to those examinations having the highest and moderately high need for revision by July 1, 2001, and complete this analysis with respect to all remaining examinations for revision by July 1, 2002.

(Amended by Stats. 2000, Chapter 1005 (SB 2029).)

Investigation, Classification and Qualification of Applicants By Examination; Waiver of Examination

7065.1. Notwithstanding Section 7065, the registrar may waive the examination for a contractor's license under any of the following circumstances:

(a) The qualifying individual has, for five of the seven years immediately preceding the application for licensure, been listed on the official records of the board as a member of the personnel of any licensee who held a license, which was active and in good standing, in the same classification

being applied for, and who during the period listed on the license has been actively engaged in a licensee's construction activities in the same classification within which the applicant applies for a license.

(b) The qualifying individual is an immediate member of the family of a licensee whose individual license was active and in good standing for five of the seven years immediately preceding the application for licensure, and the qualifying individual is able to show all of the following:

(1) The qualifying individual has been actively engaged in the licensee's business for five of the seven years immediately preceding the application for licensure.

(2) The license is required to continue the existing family business in the event of the absence or death of the licensee.

(3) An application is made for a new license in the same classifications in which the licensee is or was licensed.

(c) The qualifying individual is an employee of a corporation seeking to replace its former qualifying individual and has been employed by that corporation under the following conditions:

(1) For five of the seven years immediately preceding the application for licensure, the qualifying individual has been continually employed by the corporation in a supervisory capacity in the same classifications being applied for.

(2) For five of the seven years immediately preceding the application for licensure, the corporation has held an active license in good standing in the same classifications being applied for.

The corporation has not requested a waiver under this subdivision within the past five years.

For purposes of this section, employees of a corporation shall include, but not be limited to, the officers of a corporation.

Waiver of Examination

7065.2. Notwithstanding Section 7065, the registrar may waive the examination for a contractor's license if the applicant has previously held a valid contractor's license in this state and has been acting in the capacity of a contractor for the United States government in a position exempt from licensure under this chapter.

Experienced Licensees; Adding Additional Classifications Without Further Examinations; Field Investigation

7065.3. Notwithstanding Section 7065, upon a conclusive showing by a licensee that he or she possesses experience satisfactory to the registrar in the classification applied for, an additional classification may be added, without further examination, under all of the following conditions:

(a) For five of the seven years immediately preceding the application, the qualifying individual of the licensee has been listed as a member of the personnel of any licensee whose license was active and in good standing, and who during the period listed on a license was actively engaged in the licensee's construction activities.

(b) The qualifying individual for the applicant has had within the last 10 years immediately preceding the filing of the application, not less than four years experience as a journeyman, foreman, supervising employee or contractor in the classification within which the licensee intends to engage in the additional classification as a contractor.

(c) The application is, as determined by the registrar, for a classification which is closely related to the classification or classifications in which the licensee is licensed, or the qualifying individual is associated with a licensed general engineering contractor or licensed general building contractor and is applying for a classification which is a significant component of the licensed contractor's construction business as determined by the registrar. This section shall not apply to an applicant who is licensed solely within the limited-specialty classifications. Pursuant to Section 7065, the registrar shall conduct a comprehensive field investigation of no less than 3 percent of applications filed under this section to ensure that the applicants met the experience requirements of this section and shall make public, at quarterly meetings of the Contractors State License Board, a listing of all applications approved under this section during the previous 12 months, including, but not limited to, the name of the applicant, license number, classification applied for, and existing classifications.

Reciprocity for Contractors Licensed in Other State; Waiver of Trade Examination

7065.4. The registrar may accept the qualifications of an applicant who is licensed as a contractor in a similar classification in another state if that state accepts the qualifications of a contractor licensed in this state for purposes of licensure in that other state, and if the board ascertains, on a case-by-case basis, that the professional qualifications and conditions of good standing for licensure and continued licensure are at least the same or greater in that state as in California. The registrar may waive the trade examination for that applicant if the applicant provides written certification from that other state in which he or she is licensed, that the applicant's license has been in good standing for the previous five years.

Minor; Guardian Required

7065.5. No license shall be issued to a minor, nor to any copartnership a member of which is a minor, nor to any corporation any officer, director or responsible managing employee of which is a minor, nor to any other kind of business organization in which a minor holds a responsible official position, unless such minor shall first have had a guardian appointed by a court of competent jurisdiction.

Application for an Original License

7066. To obtain an original license, an applicant shall submit to the registrar an application in writing containing the statement that the applicant desires the issuance of a license under the terms of this chapter.

The application shall be made on a form prescribed by the registrar in accordance with the rules and regulations adopted by the board and shall be accompanied by the fee fixed by this chapter.

Acquisition and Printing of Blank Forms

7066.5. Any person may obtain blank license application, renewal, or reinstatement forms from the Department of Consumer Affairs, or may cause to be printed forms used by or approved by the Registrar of Contractors.

Financial Solvency

7067.5. Every applicant for an original license, or for the reactivation of an inactive license, or for the reissuance or reinstatement of a revoked license shall possess and every such applicant, other than one applying under Section 7029 unless required by the registrar, shall evidence financial solvency. The registrar shall deny the application of any applicant who fails to comply with this section. For purposes of this section financial solvency shall mean that the applicant's operating capital shall exceed two thousand five hundred dollars (\$2500).

The applicant shall provide answers to questions contained in a standard form of questionnaire as required by the registrar relative to his financial ability and condition and signed by the applicant under penalty of perjury.

In any case in which further financial information would assist the registrar in an investigation, the registrar may obtain such information or may require any licensee or applicant under investigation pursuant to this chapter to provide such additional financial information as the registrar may deem necessary.

The financial information required by the registrar shall be confidential and not a public record, but, where relevant, shall be admissible as evidence in any administrative hearing or judicial action or proceeding.

The registrar may destroy any financial information which has been on file for a period of at least three years.

Signatures on Applications

7067.6. Every application form for an original license, for renewal thereof, for reinstatement or for reissuance, including both active and inactive licenses, shall be signed by both the applicant and by the person qualifying on behalf of an individual or firm as referred to in Section 7068.1.

Experience and Knowledge Required

7068. (a) The board shall require an applicant to show such degree of knowledge and experience in the classification applied for, and such general knowledge of the building, safety, health, and lien laws of the state and of the administrative principles of the contracting business as the board deems necessary for the safety and protection of the public.

(b) An applicant shall qualify in regard to his or her experience and knowledge in one of the following ways:

(1) If an individual, he or she shall qualify by personal appearance or by the appearance of his or her responsible managing employee who is qualified for the same license classification as the classification being applied for.

(2) If a copartnership or a limited partnership, it shall qualify by the appearance of a general partner or by the appearance of a responsible managing employee who is

qualified for the same license classification as the classification being applied for.

(3) If a corporation, or any other combination or organization, it shall qualify by the appearance of a responsible managing officer or responsible managing employee who is qualified for the same license classification as the classification being applied for.

(c) An applicant who has been convicted of a violation of Section 7028 may not apply for a license for a one-year period from the date of conviction. Upon submittal of an application the applicant shall be subject to Section 7071.6.

(d) A responsible managing employee for the purpose of this chapter shall mean an individual who is a bona fide employee of the applicant and is actively engaged in the classification of work for which that responsible managing employee is the qualifying person in behalf of the applicant.

(e) The board shall, in addition, require an applicant who qualifies by means of a responsible managing employee under either paragraph (1) or (2) of subdivision (b) to show his or her general knowledge of the building, safety, health, and lien laws of the state and of the administrative principles of the contracting business as the board deems necessary for the safety and protection of the public.

(f) Except in accordance with Section 7068.1, no person qualifying on behalf of an individual or firm under paragraph (1), (2), or (3) of subdivision (b) shall hold any other active contractor's license while acting in the capacity of a qualifying individual pursuant to this section.

(g) At the time of application for renewal of a license, the responsible managing individual shall file a statement with the registrar, on a form prescribed by the registrar, verifying his or her capacity as a responsible managing individual to the licensee.

(h) Statements made by or on behalf of an applicant as to the applicant's experience in the classification applied for shall be verified by a qualified and responsible person. In addition, the registrar shall, as specified by board regulation, randomly review a percentage of such statements for their veracity.

(i) The registrar shall review experience gained by applicants from other states to determine whether all of that experience was gained in a lawful manner in that state.

See Unemployment Code Section 1095, Permissible Uses for EDD Data, in Appendix.

Responsibility of Qualifying Individual

7068.1. The person qualifying on behalf of an individual or firm under paragraph (1), (2), or (3) of subdivision (b) of Section 7068 shall be responsible for exercising that direct supervision and control of his or her employer's or principal's construction operations as is necessary to secure full compliance with the provisions of this chapter and the rules and regulations of the board relating to the construction operations. This person shall not act in the

capacity of the qualifying person for an additional individual or firm unless one of the following conditions exists:

(a) There is a common ownership of at least 20 percent of the equity of each individual or firm for which the person acts in a qualifying capacity.

(b) The additional firm is a subsidiary of or a joint venture with the first. "Subsidiary," as used in this subdivision, means any firm at least 20 percent of the equity of which is owned by the other firm.

(c) With respect to a firm under paragraph (2) or (3) of subdivision (b) of Section 7068, the majority of the partners or officers are the same.

(d) Notwithstanding subdivisions (a), (b), and (c), a qualifying individual may act as the qualifier for no more than three firms in any one-year period. Any qualifier, on January 1, 1992, who is acting as the qualifier for more than three firms shall comply with this section by January 1, 1993.

(e) Failure to comply with the requirement set forth in subdivision (d) shall result in the disassociation of the qualifying individual and automatic suspension of the licensee's contractor's license effective January 1, 1993.

"Firm," as used in this section, means a copartnership, a limited partnership, a corporation, or any other combination or organization described in Section 7068.

"Person," as used in this section, is limited to persons natural, notwithstanding the definition of "person in Section 7025 of this chapter.

The board shall require every applicant or licensee qualifying by the appearance of a qualifying individual to submit detailed information on the qualifying individual's duties and responsibilities for supervision and control of the applicant's construction operations.

Disassociation of Responsible Managing Officer or Employee; Notification of Registrar; Replacement

7068.2. If the responsible managing officer or responsible managing employee disassociates from the licensed entity, the licensee, or the qualifier shall notify the registrar in writing, and the licensee shall replace the qualifier, within 90 days from the date of disassociation.

To replace a responsible managing officer or responsible managing employee, the licensee shall file an application as prescribed by the registrar, accompanied by the fee fixed by this chapter, designating an individual to qualify as required by this chapter.

Upon failure to replace the qualifier within 90 days of the disassociation the license shall be automatically suspended or the classification removed at the end of the 90 days.

The registrar may review and accept the petition of a licensee who disputes the date of disassociation or who has failed to notify and replace the qualifier within the prescribed time, upon a showing of good cause by the contractor. This petition shall be received within 90 days from the date of the board's notice that the license will be

suspended if the qualifier is not replaced. The registrar may grant only one 90-day extension to replace the qualifier.

Upon failure of the licensee or the qualifier to notify the registrar of the disassociation within 90 days from the date of disassociation, the license shall be automatically suspended or the classification removed and the qualifier removed from the license effective the date the written notification is received at the board's headquarters office.

The person qualifying on behalf of an individual or firm under subdivision (a), (b), or (c) of Section 7068 shall be responsible for the licensee's construction operations until the board receives the written notification of disassociation. Failure of the licensee or the qualifier to notify the registrar of the qualifier's disassociation within 90 days of the disassociation is grounds for disciplinary action.

Substitution of Examinee; Misdemeanor

7068.5. It is a misdemeanor for any person other than the examinee named in the application to take the qualifying examination on behalf of an applicant for a contractor's license.

Provision of Examination to Another; Misdemeanor

7068.7. Any person who obtains and provides for another the qualifying examination, or any part thereof, when not authorized to do so, is guilty of a misdemeanor.

Qualifications; Criminal Record

7069. (a) An applicant, and each officer, director, partner, associate and responsible managing employee thereof, shall not have committed acts or crimes which are grounds for denial of licensure under Section 480.

(b) As part of an application for a contractor's license, the board shall require an applicant to furnish a full set of fingerprints for purposes of conducting a criminal history record check. Fingerprints furnished pursuant to this subdivision shall be submitted in an electronic format where readily available. Requests for alternative methods of furnishing fingerprints are subject to the approval of the registrar. The board shall use the fingerprints furnished by an applicant to obtain criminal history information on the applicant from the Department of Justice and the United States Federal Bureau of Investigation, including any subsequent arrest information available. This subdivision shall become operative on January 1, 2004.

(Amended Stats 2002 Chapter 744 § 6 (SB 1953).)

Prior License Status

7070. An applicant shall show that he or she has never been denied a license or had a license revoked for reasons that would preclude the granting of the license applied for. Where the board has denied an application for license under this chapter or Chapter 2 (commencing with Section 480) of Division 1.5, it shall, in its decision, or in its notice under subdivision (b) of Section 485, inform the applicant of the earliest date that the applicant may reapply for a license, which shall be one year from the effective date of the decision or service of notice under subdivision (b) of Section 485, unless the board prescribes an earlier date.

Qualifications of Groups

7071. No license shall be issued to a corporation, copartnership, or other combination or organization if any responsible officer or director of such corporation, or other combination or organization, or any member of such copartnership does not meet the qualifications required of an applicant other than those qualifications relating to knowledge and experience.

Privileges of Member of Armed Forces

7071.3. Notwithstanding any other provision of this code, the holder of a current valid license under this chapter who has entered or enters the armed forces of the United States may designate a responsible managing person or persons to act for him while in the armed forces and until one year after his discharge therefrom, after which time the authority to so act for the licensee shall terminate. The renewal fee shall be paid for any such licensee so designating others to act for him.

Any license shall remain in full force and effect for 30 days after the entrance of the licensee into the armed forces, but he shall prior to the expiration of such 30-day period provide the registrar with the name or names of the persons so designated to conduct his business. The registrar may qualify such persons in any manner he may adopt. Persons so designated shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

Persons so designated committing any of the acts or crimes constituting grounds for denial of licensure under Section 480 shall be removed from the business of such licensee after a hearing as provided in this chapter.

Contractor's Bond; Form; Persons Benefitted

7071.5. The contractor's bond required by this article shall be executed by an admitted surety in favor of the State of California, in a form acceptable to the registrar and filed with the registrar by the licensee or applicant. The contractor's bond shall be for the benefit of the following:

(a) Any homeowner contracting for home improvement upon the homeowner's personal family residence damaged as a result of a violation of this chapter by the licensee.

(b) Any person damaged as a result of a willful and deliberate violation of this chapter by the licensee, or by the fraud of the licensee in the execution or performance of a construction contract.

(c) Any employee of the licensee damaged by the licensee's failure to pay wages.

(d) Any person or entity, including an express trust fund described in Section 3111 of the Civil Code, to whom a portion of the compensation of an employee of a licensee is paid by agreement with that employee or the collective bargaining agent of that employee, damaged as the result of the licensee's failure to pay fringe benefits for its employees, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations thereunder (without regard to whether the work was performed on a private or public work). Damage

to an express trust fund is limited to actual employer payments required to be made on behalf of employees of the licensee, as part of the overall compensation of those employees, which the licensee fails to pay.

(Amended by Stats.1999, Chapter 795 (SB 914).)

Bond as Condition to Issuance, Renewal, Reinstatement, etc.

7071.6. (First of two; Operative until January 1, 2004)

(a) The board shall require as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, that the applicant or licensee file or have on file a contractor's bond in the sum of seven thousand five hundred dollars (\$7,500), except that a license bond in the sum of ten thousand dollars (\$10,000) shall be required for an applicant or licensee to obtain the swimming pool classification outlined in Section 832.53 of Title 16 of the California Code of Regulations.

(b) No bond shall be required of a holder of a license that has been inactivated on the official records of the board during the period the license is inactive.

(c) Notwithstanding any other provision of law, as a condition precedent to licensure, the board may require an applicant to post a contractor's bond in twice the amount required pursuant to subdivision (a) until the time that the license is renewed, under the following conditions:

(1) The applicant has either been convicted of a violation of Section 7028 or has been cited pursuant to Section 7028.7.

(2) If the applicant has been cited pursuant to Section 7028.7, the citation has been reduced to a final order of the registrar.

(3) The violation of Section 7028, or the basis for the citation issued pursuant to Section 7028.7, constituted a substantial injury to the public.

(d) This section shall become inoperative and is repealed on January 1, 2004, unless a later enacted statute deletes or extends that date.

(Added Stats 1995 Chapter 467 § 5 (SB 1061). Amended Stats 2002 Chapter 1123 § 1 (SB 1919), repealed January 1, 2004.)

7071.6 (Second of two; Operative January 1, 2004)

(a) The board shall require as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, that the applicant or licensee file or have on file a contractor's bond in the sum of ten thousand dollars (\$10,000), regardless of the classification. However, on and after January 1, 2007, the sum of the bond that an applicant or licensee is required to have on file shall be twelve thousand five hundred dollars (\$12,500).

(b) Excluding the claims brought by the beneficiaries specified in subdivision (a) of Section 7071.5, the aggregate liability of a surety on claims brought against a bond required by this section shall not exceed the sum of seven thousand five hundred dollars (\$7,500). The bond proceeds in excess of seven thousand five hundred dollars (\$7,500) shall be reserved exclusively for the claims of the benefi-

ciaries specified in subdivision (a) of Section 7071.5. However, nothing in this section shall be construed so as to prevent any beneficiary specified in subdivision (a) of Section 7071.5 from claiming or recovering the full measure of the bond required by this section.

(c) No bond shall be required of a holder of a license that has been inactivated on the official records of the board during the period the license is inactive.

(d) Notwithstanding any other provision of law, as a condition precedent to licensure, the board may require an applicant to post a contractor's bond in twice the amount required pursuant to subdivision (a) until the time that the license is renewed, under the following conditions:

(1) The applicant has either been convicted of a violation of Section 7028 or has been cited pursuant to Section 7028.7.

(2) If the applicant has been cited pursuant to Section 7028.7, the citation has been reduced to a final order of the registrar.

(3) The violation of Section 7028, or the basis for the citation issued pursuant to Section 7028.7, constituted a substantial injury to the public.

(e) This section shall become operative on January 1, 2004.

(Added Stats 2002 Chapter 1123 § 2 (SB 1919), operative January 1, 2004.)

Acceptance of Bond

7071.7. (a) Except as provided in subdivision (b), the registrar shall accept a bond required by Section 7071.6, 7071.8, or 7071.9 as of the effective date shown on the bond, if the bond is received by the registrar within 90 days after that date, and shall reinstate the license to which the bond pertains, if otherwise eligible, retroactive to the effective date of the bond.

(b) Notwithstanding subdivision (a), the registrar shall accept a bond as of the effective date shown on the bond, even if the bond is not received by the registrar within 90 days after that date, upon a showing by the licensee, on a form acceptable to the registrar, that the failure to have a bond on file was due to circumstances beyond the control of the licensee. The registrar shall reinstate the license to which the bond pertains, if otherwise eligible, retroactive to the effective date of the bond.

Bond After Suspension or Revocation of License

7071.8. (a) This section applies to an application for a license, for renewal or restoration of a license, an application to change officers of a corporation, or for continued valid use of a license which has been disciplined, whether or not the disciplinary action has been stayed, made by any of the following persons or firms:

(1) Any person whose license has been suspended or revoked as a result of disciplinary action, or any person who was a qualifying individual for a licensee at any time during which cause for disciplinary action occurred resulting in suspension or revocation of the licensee's license, whether or not the qualifying individual had knowledge or participated in the prohibited act or omission.

(2) Any person who was an officer, director, member, or partner of a licensee at any time during which cause for disciplinary action occurred resulting in suspension or revocation of the licensee's license and who had knowledge of or participated in the act or omission which was the cause for the disciplinary action.

(3) Any partnership, corporation, firm, or association of which any existing or new officer, director, member, partner, or qualifying person has had a license suspended or revoked as a result of disciplinary action.

(4) Any partnership, corporation, firm, or association of which any officer, director, member, partner, or qualifying person was a member, officer, director, or partner of a licensee at any time during which cause for disciplinary action occurred resulting in suspension or revocation of the license, and who had knowledge of or participated in the act or omission which was the cause for the disciplinary action.

(b) The board shall require as a condition precedent to the issuance, reissuance, renewal, or restoration of a license to the applicant, or to the approval of an application to change officers of a corporation, or removal of suspension, or to the continued valid use of a license which has been suspended or revoked, but which suspension or revocation has been stayed, that the applicant or licensee file or have on file a contractor's bond in a sum to be fixed by the registrar based upon the seriousness of the violation, but which sum shall not be less than fifteen thousand dollars (\$15,000) nor more than 10 times that amount required by Section 7071.6.

(c) The bond is in addition to, may not be combined with, and does not replace any other type of bond required by this chapter. The bond shall remain on file with the registrar for a period of at least two years and for such additional time as the registrar may determine. The bond period shall run only while the license is current, active, and in good standing, and shall be extended until such time as the license has been current, active, and in good standing for the required period. Each applicant or licensee shall be required to file only one disciplinary contractor's bond of the type described in this section for each application or license subject to this bond requirement.

Qualifying Individual's Bond; Necessity

7071.9. (a) If the qualifying individual, as referred to in Sections 7068 and 7068.1, is not either the proprietor, a general partner, or joint licensee, he or she shall file or have on file a qualifying individual's bond as provided in Section 7071.10 in the sum of seven thousand five hundred dollars (\$7,500). This bond is in addition to, and may not be combined with, any contractor's bond required by Sections 7071.5 to 7071.8, inclusive, and is required for the issuance, reinstatement, reactivation, or continued valid use of a license.

(b) The responsible managing officer of a corporation shall not be required to file or have on file a qualifying individual's bond, if he or she owns 10 percent or more of the voting stock of the corporation and certifies to that fact on a form prescribed by the registrar.

(Amended by Stats 1993 Chapter 1264 (SB 574).)

Qualifying Individual's Bond; Form; Filling; Beneficiaries

7071.10. (a) The qualifying individual's bond required by this article shall be executed by an admitted surety insurer in favor of the State of California, in a form acceptable to the registrar and filed with the registrar by the qualifying individual. The qualifying individual's bond shall be for the benefit of the following persons:

(1) Any homeowner contracting for home improvement upon the homeowner's personal family residence damaged as a result of a violation of this chapter by the licensee.

(2) Any person damaged as a result of a willful and deliberate violation of this chapter by the licensee, or by the fraud of the licensee in the execution or performance of a construction contract.

(3) Any employee of the licensee damaged by the licensee's failure to pay wages.

(4) Any person or entity, including an express trust fund described in Section 3111 of the Civil Code, to whom a portion of the compensation of an employee of a licensee is paid by agreement with that employee or the collective bargaining agent of that employee, that is damaged as the result of the licensee's failure to pay fringe benefits for its employees including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations adopted thereunder (without regard to whether the work was performed on a public or private work). Damage to an express trust fund is limited to employer payments required to be made on behalf of employees of the licensee, as part of the overall compensation of those employees, which the licensee fails to pay.

(b) The qualifying individual's bond shall not be required in addition to the contractor's bond when the qualifying individual is himself or herself the proprietor under subdivision (a) or a general partner under subdivision (b) of Section 7068.

(Amended by Stats.1999, Chapter 795 (SB 914).)

Action on Claim Against Bond; Preferred Claim; Limitation on Amount and Time on Action; Notice of Payment; Disciplinary Action; Legal Fees; Claims Against Deposit

7071.11. (a) A copy of the complaint in a civil action commenced by a person claiming against a bond required by this article shall be served by registered or certified mail upon the registrar by the clerk of the court at the time the action is commenced and the registrar shall maintain a record, available for public inspection, of all actions so commenced. The aggregate liability of a surety on a claim for wages and fringe benefits brought against any bond required by this article, other than a bond required by Section 7071.8, shall not exceed the sum of four thousand dollars (\$4,000). If any bond which may be required is insufficient to pay all claims in full, the sum of the bond shall be distributed to all claimants in proportion to the amount of their respective claims. Any action, other than an action to recover wages or fringe benefits, against a contractor's bond or a bond of a qualifying individual filed by an active licensee shall be brought within two years

after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, whichever first occurs. Any action, other than an action to recover wages or fringe benefits, against a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, or within two years after the last date for which a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first. A claim to recover wages or fringe benefits shall be brought within six months from the date that the wage or fringe benefit delinquencies were discovered, but in no event shall a civil action thereon be brought later than two years from the date the wage or fringe benefit contributions were due.

(b) Whenever the surety makes payment on any claim against a bond required by this article, whether or not payment is made through a court action or otherwise, the surety shall, within 30 days of the payment, provide notice to the registrar. The notice required by this subdivision shall provide the following information by declaration on a form prescribed by the registrar:

- (1) The name and license number of the contractor.
- (2) The surety bond number.
- (3) The amount of payment.
- (4) The statutory basis upon which the claim is made.
- (5) The names of the person or persons to whom payments have been made.
- (6) Whether or not the payments were the result of a good faith action by the surety.

The notice shall also clearly indicate whether or not the licensee filed a protest in accordance with this section.

(c) Prior to the settlement of a claim through a good faith payment by the surety, a licensee shall have not less than 15 days in which to provide a written protest. This protest shall instruct the surety not to make payment from the bond on the licensee's account upon the specific grounds that the claim is opposed by the licensee, and provide the surety a specific and reasonable basis for the licensee's opposition to payment.

- (1) Whenever a licensee files a protest in accordance with this subdivision, the board shall investigate the matter and file disciplinary action as set forth under this chapter if there is evidence that the surety has sustained a loss as the result of a good faith payment made for the purpose of mitigating any damages incurred by any person or entity covered under Section 7071.5.
- (2) Any licensee that fails to file a protest as specified in this subdivision shall have 90 days from the date of notification by the board to submit proof of payment of the actual amount owed to the surety and, if applicable, proof of payment of any judgment or admitted claim in excess of the amount of the bond or, by operation of law, the license shall be suspended at the end of the 90 days.

A license suspension pursuant to this subdivision shall be disclosed indefinitely as a failure to settle outstanding final liabilities in violation of this chapter. The disclosure specified by this subdivision shall also be applicable to all licenses covered by the provisions of subdivision (d).

(d) No license may be renewed, reissued, or reinstated while any judgment or admitted claim in excess of the amount of the bond remains unsatisfied. Further, no license may be renewed, reissued, or reinstated while any surety remains unreimbursed for any loss or expense sustained on any bond issued for the licensee or for any entity of which any officer, director, member, partner, or qualifying person was an officer, director, member, partner, or qualifying person of the licensee while the licensee was subject to suspension or disciplinary action under this section.

(e) The licensee may provide the board with a notarized copy of an accord, reached with the surety to satisfy the debt in lieu of full payment. By operation of law, failure to abide by the accord shall result in the automatic suspension of any license to which this section applies. A license that is suspended for failure to abide by the accord may only be renewed or reinstated when proof of satisfaction of all debts is made.

(f) Legal fees may not be charged against the bond by the board.

(g) In any case in which a claim is filed against a deposit given in lieu of a bond by any employee or by an employee organization on behalf of an employee, concerning wages or fringe benefits based upon the employee's employment, claims for the nonpayment shall be filed with the Labor Commissioner. The Labor Commissioner shall, pursuant to the authority vested by Section 96.5 of the Labor Code, conduct hearings to determine whether or not the wages or fringe benefits should be paid to the complainant. Upon a finding by the commissioner that the wages or fringe benefits should be paid to the complainant, the commissioner shall notify the registrar of the findings. The registrar shall not make payment from the deposit on the basis of findings by the commissioner for a period of 10 days following determination of the findings. If, within the period, the complainant or the contractor files written notice with the registrar and the commissioner of an intention to seek judicial review of the findings pursuant to Section 11523 of the Government Code, the registrar shall not make payment, if an action is actually filed, except as determined by the court. If, thereafter, no action is filed within 60 days following determination of findings by the commissioner, the registrar shall make payment from the deposit to the complainant.

(h) Any action, other than an action to recover wages or fringe benefits, against a deposit given in lieu of a contractor's bond or bond of a qualifying individual filed by an active licensee shall be brought within three years after the expiration of the license period during which the act or omission occurred, or within three years after the date the license was inactivated, canceled, or revoked by the board, whichever first occurs. Any action, other than an action to recover wages or fringe benefits, against a deposit given in lieu of a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought within

three years after the expiration of the license period during which the act or omission occurred, or within three years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, or within three years after the last date for which a deposit given in lieu of a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first. If the board is notified of a complaint relative to a claim against the deposit, the deposit shall not be released until the complaint has been adjudicated.

(Amended Stats 1993 Chapter 1264 § 7 (SB 574); Stats 1999 Chapter 795 § 3 (SB 914); Stats 2001 Chapter 728 § 58 (SB 724); Stats 2002 Chapter 311 § 3 (AB 264).

Deposit in Lieu of Bond

7071.12. Instead of the bond provided by this article a deposit may be given pursuant to Article 7 (commencing with Section 995.710) of Chapter 2 of Title 14 of Part 2 of the Code of Civil Procedure.

Reference in Advertising Prohibited

7071.13. Any reference by a contractor in his advertising, soliciting, or other presentations to the public to any bond required to be filed pursuant to this chapter is a ground for the suspension of the license of such contractor.

Discrimination

7071.14. No licensee or applicant for a license under this chapter shall be denied a contractor's license bond solely because of his race, religious creed, color, national origin, ancestry, or sex. Whoever denies a contractor's license bond solely on the grounds specified herein is liable for each and every such offense for the actual damages, and two hundred fifty dollars (\$ 250) in addition thereto, suffered by the licensee or applicant for a license.

Failure To Maintain Sufficient Bond; Effect

7071.15. If a licensee fails to maintain a sufficient bond required by this article, the license is subject to suspension or revocation pursuant to Section 996.020 of the Code of Civil Procedure.

Requirement of Bond; Failure of Payment

7071.17. Requirement of bond for applicant who has unsatisfied final judgment for failure to pay contractor, subcontractor, consumer, materials supplier, or employee

(a) Notwithstanding any other provision of law, the board shall require, as a condition precedent to accepting an application for licensure, renewal, reinstatement, or to change officers or other personnel of record, that an applicant, previously found to have failed or refused to pay a contractor, subcontractor, consumer, materials supplier, or employee based on an entered and unsatisfied final judgment from a court of law, file or have on file with the board a judgment bond sufficient to guarantee payment of an amount equal to the unsatisfied final judgment or judgments. The applicant shall have 90 days from the date of notification by the board to file the bond or the application shall become void and the applicant shall reapply for issuance, reinstatement, or reactivation of a license. The

board may not issue, reinstate, or reactivate a license until the judgment bond is filed with the board. The judgment bond is in addition to the contractor's bond. The bond shall be on file for a minimum of one year, after which the bond may be removed by submitting proof of satisfaction of all debts. The applicant may provide the board with a notarized copy of any accord, reached with any individual holding an unsatisfied final judgment, to satisfy a debt in lieu of filing the bond. The board shall include on the license application for issuance, reinstatement, or reactivation, a statement, to be made under penalty of perjury, as to whether there are any entered and unsatisfied judgments against the applicant on behalf of contractors, subcontractors, consumers, materials suppliers, or the applicant's employees. Notwithstanding any other provision of law, if it is found that the applicant falsified the statement then the license will be retroactively suspended to the date of issuance and the license will stay suspended until the judgment bond, satisfaction of judgment, or notarized copy of an accord reached with any individual holding an unsatisfied final judgment is filed.

(b) Notwithstanding any other provision of law, the licensee shall notify the registrar in writing of any entered and unsatisfied judgments within 90 days from the date of judgment. If the licensee fails to notify the registrar in writing within 90 days, the license shall be automatically suspended on the date that the registrar is informed, or is made aware of the unsatisfied judgment. The suspension shall not be removed until proof of satisfaction of judgment, or in lieu thereof, a notarized copy of an accord is submitted to the registrar. If the licensee notifies the registrar in writing within 90 days of the date of judgment of any entered and unsatisfied judgments, the board shall require as a condition to the continual maintenance of the license that the licensee file or have on file with the board a judgment bond sufficient to guarantee payment of an amount equal to the unsatisfied judgment or judgments. The licensee has 90 days from date of notification by the board to file the bond or at the end of the 90 days the license shall be automatically suspended. The licensee may provide the board with a notarized copy of any accord, reached with any individual holding an unsatisfied final judgment, to satisfy a debt in lieu of filing the bond.

(c) By operation of law, failure to maintain the bond or failure to abide by the accord shall result in the automatic suspension of any license to which this section applies.

(d) A license that is suspended for failure to file the bond, maintain the bond, or abide by the accord, can only be reinstated when proof of satisfaction of all debts is made, or when a notarized copy of an accord, reached with any individual holding an unsatisfied final judgment, has been filed.

(e) This section applies only with respect to an unsatisfied judgment that is substantially related to the construction activities of a licensee licensed under this chapter, or to the qualifications, functions, or duties of the licensee.

(f) This section shall not apply to an applicant or licensee when a bankruptcy proceeding has been filed.

(g) Except as otherwise provided, the judgment bond shall

remain in full force in the amount posted until the entire debt is satisfied. If, at the time of renewal, the licensee submits proof of partial satisfaction of the outstanding final judgment, the board may authorize the judgment bond be reduced to the amount of the unsatisfied portion of the outstanding judgment. When the licensee submits proof of satisfaction of all debts, the judgment bond requirement may be removed.

(h) The board shall take the actions required by this section upon notification by any party having knowledge of the outstanding judgment upon a showing of proof of the judgment.

(i) For the purposes of this section, the term “judgment” includes any final arbitration award.

(j) The qualifying person and any member of the licensee or personnel of the licensee named as a judgment debtor in an unsatisfied final judgment from a court of law shall be automatically prohibited from serving as an officer, director, associate, partner, owner, qualifying individual, or other personnel of record of another licensee. This prohibition shall cause the license of any other existing renewable licensed entity with any of the same personnel of record as the judgment debtor licensee to be suspended until the license of the judgment debtor is reinstated or until those same personnel of record disassociate themselves from the renewable licensed entity.

(k) For purposes of this section, a cash deposit may be submitted in lieu of the judgment bond.

(Added Stats. 1995, Chapter 467 (SB 1061); amended by Stats. 1997, Chapter 469 (AB 772).)

See Code of Civil Procedure Section 116.220 Jurisdiction of Small Claims Court, in Appendix.

Application Fee and Acceptable Application

7072. Following receipt of the application fee and an application furnishing complete information in the manner required by the registrar, and after such examination and investigation as he may require, the registrar, within 15 days after approval of the application, shall notify the applicant that a license may be issued to him on payment of the initial license fee provided in Article 8 (commencing at Section 7135), and, when the initial license fee is paid, shall issue a license to him permitting him to engage in business as a contractor under the terms of this chapter.

Issuance of License; Plastic Pocket Card

7072.5. (a) Upon the issuance of a license, a plasticized pocket card of a size, design, and content as may be determined by the registrar shall be issued at no cost to each licensee, or to the partners or officers or responsible managing officer of licensees licensed as other than individuals, which card shall be evidence that the licensee is duly licensed pursuant to this chapter. All cards issued shall be surrendered upon the suspension, revocation, or denial of renewal of the license, and shall be mailed or delivered to the board within five days of the suspension, revocation, or denial.

(b) When any person to whom a card is issued terminates his or her position, office, or association with a licensee

which is licensed as other than an individual, that person shall surrender his or her card to the licensee and within five days thereafter the card shall be mailed or delivered by the licensee to the board for cancellation.

(c) The Contractors State License Board shall, prior to production of the plasticized cards, develop a system for the reporting and tracking of lost or stolen cards. The cards shall be issued to all licensees upon license renewal on and after July 1, 1989.

(Added by Stats. 1988, Chapter 1495.)

Denial of Application

7073. The registrar may deny any application where the applicant has failed to comply with any rule or regulation adopted pursuant to this chapter or where there are grounds for denial under Section 480. Procedures for denial of an application shall be conducted in accordance with Section 485.

Factors Voiding Application for Original License, Additional Classification or Change of Qualifier; Retention of Application by Registrar; Reapplication Fee

7074. (a) Except as otherwise provided by this section, an application for an original license, for an additional classification or for a change of qualifier shall become void when:

(1) The applicant or examinee for the applicant has failed to appear for the scheduled qualifying examination and fails to request and pay the fee for rescheduling within 90 days of notification of failure to appear, or, after being rescheduled, has failed to appear for a second examination.

(2) The applicant or the examinee for the applicant has failed to achieve a passing grade in the scheduled qualifying examination, and fails to request and pay the fee for rescheduling within 90 days of notification of failure to pass the examination.

(3) The applicant or the examinee for the applicant has failed to achieve a passing grade in the qualifying examination within 18 months after the application has been deemed acceptable by the board.

(4) The applicant for an original license, after having been notified to do so, fails to pay the initial license fee within 90 days from the date of such notice.

(5) The applicant, after having been notified to do so, fails to file within 90 days from the date of the notice any bond or cash deposit or other documents that may be required for issuance or granting pursuant to this chapter.

(6) After filing, the applicant withdraws the application.

(7) The applicant fails to return the application rejected by the board for insufficiency or incompleteness within 90 days from the date of original notice or rejection.

(8) The application is denied after disciplinary proceedings conducted in accordance with the provisions of this code.

(b) The void date on an application may be extended up to 90 days or one examination may be rescheduled without a fee upon documented evidence by the applicant that the

failure to complete the application process or to appear for an examination was due to a medical emergency or other circumstance beyond the control of the applicant.

(c) An application voided pursuant to the provisions of this section shall remain in the possession of the registrar for the period as he or she deems necessary and shall not be returned to the applicant. Any reapplication for a license shall be accompanied by the fee fixed by this chapter.

Display of License; Proof of Possession and Renewal

7075. The license shall be displayed in the licensee's main office or chief place of business. Satisfactory evidence of the possession of a license and the current renewal thereof shall be provided by the licensee upon demand.

(Amended by Stats. 1990, Chapter 1326 (AB 3480); Stats. 2001, Chapter 728 (SB 724).)

License is Not Transferable; Reissue of License Number

7075.1. (a) No license, regardless of type or classification, shall be transferable to any other person or entity under any circumstances.

(b) A license number may be reissued after cancellation, revocation, suspension, or expiration beyond the renewal period specified in Section 7141, only under the following circumstances:

- (1) To an individual upon application.
 - (2) To a partnership upon application if there is no change in the partners or partnership structure.
 - (3) To a corporation upon application if there is no change in the status of the corporation as registered with the California Secretary of State.
 - (c) A license number may be reissued or reassigned to a different entity only under the following conditions:
 - (1) To a corporation when the parent corporation has merged or created a subsidiary, the subsidiary has merged into the parent corporation, or the corporation has changed its filing status with the Secretary of State from a domestic corporation to a foreign corporation or from a foreign corporation to a domestic corporation, and the new entity is being formed to continue the business of the formerly licensed corporation.
 - (2) To an individual when the individual is an immediate family member of a licensed individual who is deceased or absent and the license is required to continue an existing family contracting business.
 - (3) To a corporation when created by immediate members of an individual licensee's family to continue an existing deceased or absent individual licensee's contracting business.
 - (4) To a corporation when the corporation is formed by an individual licensee and the individual licensee maintains ownership directly or indirectly of shares evidencing more than 50 percent of the voting power.
- For purposes of this section, an immediate family member of a deceased or absent licensed individual is either a

spouse, brother, sister, son, daughter, stepson, stepdaughter, grandson, granddaughter, son-in-law, or daughter-in-law.

Events Resulting in Cancellation of License; Continuance of License

7076. (a) An individual license shall be canceled upon the death of a person licensed as an individual. An immediate member of the family of the deceased licensee may request a continuance of the license to complete projects in progress and undertake new work for a reasonable amount of time to be determined by rules of the board. The request for a continuance must be made in writing and received at the board's headquarters office within 90 days after the death. Approval of the continuance of an individual license may be contingent upon meeting the bond requirements of Sections 7071.5 and 7071.6 within 90 days of notification by the board of that requirement. The immediate member of the family must apply for and obtain his or her own license to continue contracting after the continuance expires.

(b) A partnership license shall be canceled upon the death of a general partner. The remaining partner or partners shall notify the registrar in writing within 90 days of the death of a general partner. Failure to notify the registrar within 90 days of the death is grounds for disciplinary action.

The remaining general partner or partners may request a continuance of the license to complete projects in progress and undertake new work for a reasonable amount of time to be determined by rules of the board. The request for a continuance must be made in writing and received at the board's headquarters office within 90 days after the death. The remaining general partner or partners must apply for and obtain a new license to continue contracting after the continuance expires.

(c) A partnership license shall be canceled upon the disassociation of a general partner or upon the dissolution of the partnership. The disassociating partner or the remaining partner or partners shall notify the registrar in writing within 90 days of the disassociation of a general partner or dissolution of the partnership. Failure to notify the registrar of the disassociation or dissolution within 90 days shall cause the license to be canceled effective the date the written notification is received at the board's headquarters office. Failure to notify the registrar within 90 days of the disassociation or dissolution is grounds for disciplinary action. The remaining general partner or partners may request a continuance of the license to complete projects contracted for or in progress prior to the date of disassociation or dissolution for a reasonable length of time to be determined by rules of the board. The request for a continuance must be made in writing and received at the board's headquarters office within 90 days after the disassociation or dissolution. The remaining general partner or partners must apply for and obtain a new license to undertake new work and to continue contracting after the continuance expires.

(d) The general partner or partners shall notify the registrar in writing within 90 days of the death of a limited partner. Failure to notify the registrar within 90 days of the death is grounds for disciplinary action.

The death of a limited partner will not affect the partnership license unless the partnership license has only one limited partner. In this case, the license will be canceled upon the death of the limited partner unless a new limited partner is added to the license within 90 days of the death.

If the license is canceled, the remaining general partner or partners may request a continuance of the license to complete projects in progress and to undertake new work for a reasonable amount of time to be determined by rules of the board. The request for a continuance must be made in writing and received at the board's headquarters office within 90 days after the death. The remaining general partner or partners must apply for and obtain a new license to continue contracting after the continuance expires.

(e) The general partner or partners shall notify the registrar in writing within 90 days of the disassociation of a limited partner. Failure to notify the registrar of the disassociation, within 90 days, shall cause the disassociation to be effective the date the written notification is received at the board's headquarters office. Failure to notify the registrar within 90 days of the disassociation is grounds for disciplinary action.

The disassociation of a limited partner will not affect the partnership license unless the partnership license has only one limited partner. In this case, the license will be canceled upon the disassociation of the limited partner unless a new limited partner is added to the license within 90 days of the disassociation. If the license is canceled, the remaining general partner or partners may request a continuance of the license to complete projects contracted for or in progress prior to the date of disassociation for a reasonable amount of time to be determined by rules of the board. The request for a continuance must be made in writing and received at the board's headquarters office within 90 days after the death. The remaining general partner or partners must apply for and obtain a new license to undertake new work and to continue contracting after the continuance expires.

(f) A joint venture license shall be canceled upon the cancellation, revocation, or disassociation of any of its entity licenses or upon the dissolution of the joint venture. The registrar shall be notified in writing within 90 days of the disassociation of a joint venture entity or dissolution of the joint venture. Failure to notify the registrar of the disassociation or dissolution within 90 days shall cause the license to be canceled effective the date the written notification is received at the board's headquarters office. Failure to notify the registrar within 90 days of the disassociation or dissolution is grounds for disciplinary action.

Any remaining entity or entities may request a continuance of the license to complete projects contracted for or in progress prior to the date of disassociation or dissolution for a reasonable amount of time to be determined by rules of the board. The request for a continuance must be made in writing and received at the board's headquarters office within 90 days of the disassociation or dissolution. The remaining entity or entities must apply for and obtain a new license to undertake new work and to continue contracting after the continuance expires.

(g) Any individual, partnership, or joint venture license continued in accordance with this section is subject to all other provisions of this chapter.

(h) A corporation license shall be canceled upon the corporation's dissolution, merger, or surrender of its right to do business in this state. The corporation shall notify the registrar in writing within 90 days of the dissolution, merger, or surrender. Failure to notify the registrar of the dissolution, merger, or surrender within 90 days shall cause the license to be canceled effective the date written notification is received at the board's headquarters office. If the corporation fails to notify the board of the dissolution, merger, or surrender, the corporation license shall be canceled 60 days after the board's discovery when researching the corporate records of the Secretary of State. Failure to notify the registrar within 90 days of the dissolution, merger, or surrender is grounds for disciplinary action.

(i) The registrar shall review and accept the petition of a licensee who disputes the date of cancellation upon a showing of good cause. This petition shall be received within 90 days of the board's official notice of cancellation.

Cancellation of Voluntarily Surrendered License

7076.1. Upon the voluntary surrender of a license by a licensee, the registrar shall order the license canceled. Cancellation will be effected upon receipt of the request by the registrar. No refund will be made of any fee which a licensee may have paid prior to the surrender of the license.

To reinstate a canceled license the licensee must pay all of the fees and meet all of the qualifications and requirements set forth in this chapter for obtaining an original license.

Suspension for Failure to be Registered and in Good Standing After Notice

7076.2. Notwithstanding any other provision of law, the failure of a contractor licensed to do business as a corporation in this state to be registered and in good standing with the Secretary of State after notice from the registrar shall result in the automatic suspension of the corporate license by operation of law. The registrar shall notify the corporate licensee in writing of its failure to be registered and in good standing with the Secretary of State and that the licensee shall be suspended 30 days from the date of the notice if the corporate licensee does not provide proof satisfactory to the registrar that it is properly registered and in good standing with the Secretary of State. Reinstatement may be made at any time following the suspension by providing proof satisfactory to the registrar that the corporate license is properly registered and in good standing.

Inactive License; Renewal; Reactivation; Disciplinary Actions Not Barred

7076.5. (a) A contractor may inactivate his or her license by submitting a form prescribed by the registrar accompanied by the current active license certificate. When the

current license certificate has been lost, the licensee shall pay the fee prescribed by law to replace the license certificate. Upon receipt of an acceptable application to inactivate, the registrar shall issue an inactive license certificate to the contractor. The holder of an inactive license shall not be entitled to practice as a contractor until his or her license is reactivated.

(b) Any licensed contractor who is not engaged in work or activities which require a contractor's license may apply for an inactive license.

(c) Inactive licenses shall be valid for a period of four years from their due date.

(d) During the period that an existing license is inactive, no bonding requirement pursuant to Section 7071.6, 7071.8 or 7071.9 or qualifier requirement pursuant to Section 7068 shall apply. An applicant for license having met the qualifications for issuance may request that the license be issued inactive unless the applicant is subject to the provisions of Section 7071.8.

(e) The board shall not refund any of the renewal fee which a licensee may have paid prior to the inactivation of his or her license.

(f) An inactive license shall be renewed on each established renewal date by submitting the renewal application and paying the inactive renewal fee.

(g) An inactive license may be reactivated by submitting an application acceptable to the registrar, by paying the full renewal fee for an active license and by fulfilling all other requirements of this chapter. No examination shall be required to reactivate an inactive license.

(h) The inactive status of a license shall not bar any disciplinary action by the board against a licensee for any of the causes stated in this chapter.

Probationary License

7077. Every original license, except an additional classification issued pursuant to Section 7059, shall be a probationary license until such time as the license is renewed. If information is brought to the attention of the registrar, during such probationary period, regarding any act or omission of the licensee constituting grounds for denial, revocation, or suspension of an application or license, such that, in the registrar's discretion, it would be proper to revoke the probationary license, the registrar shall forthwith notify the applicant to show cause within not more than 30 days, why the probationary license should not be revoked. The proceedings shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the registrar shall have all the powers granted therein. A probationary license shall not be renewed during the pendency of any proceedings brought pursuant to this section.

ARTICLE 6. RECORDS

Application, Public Posting

7080.5. When an application has been accepted by the registrar, the name and address of the applicant, every

classification for which the applicant has applied, and the names and titles of all personnel who have signed the application shall be publicly posted by the registrar, on the day following acceptance, in the office of the Contractors State License Board in Sacramento.

Publication of Register

7081. Whenever funds are available for the purpose, the registrar shall publish a list of the names and addresses of contractors, registered under this chapter and of the licenses issued, suspended or revoked, and such further information with respect to this chapter and its administration as he deems proper.

He may furnish the lists to such public works and building departments, public officials or public bodies, and other persons interested in or allied with the building and construction industry in this or any other State as he deems advisable and, at such intervals as he deems necessary whenever funds are available.

Copies of the lists may also be furnished by the registrar upon request to any firm or individual upon payment of a reasonable fee fixed by the registrar.

Dissemination of Additional Information

7082. Whenever funds are available for the purpose, the registrar may publish and disseminate to licentiates of the board, and public officials or other persons interested in or allied with the building and construction industry, such information with relation to the administration and enforcement of this chapter as he deems necessary to carry out its purposes.

Changes of Personnel, Business Name, Address, Bond Exemption, Multiple License Exemption; Failure to Notify Registrar Within 90 Days

7083. All licensees shall notify the registrar in writing within 90 days of any change to information recorded under this chapter. This notification requirement shall include, but not be limited to, changes in address, personnel, business name, qualifying individual bond exemption pursuant to Section 7071.9, or exemption to qualify multiple licenses pursuant to Section 7068.1.

Failure of the licensee to notify the registrar of any change to information within 90 days shall cause the change to be effective the date the written notification is received at the board's headquarters office.

Failure to notify the registrar of the changes within the 90 days is grounds for disciplinary action.

(Amended by Stats. 1990, Chapter 1326 (AB 3480).)

Address Correction; Licensees with Expired, Canceled, or Inactive Licenses

7083.1. Any licensee whose license is expired, canceled, or inactive, shall notify the registrar in writing of any change of address of record within 90 days, and shall maintain a current address of record during the three-year period immediately following the expiration, cancellation, or inactivation of the license.

Rules and Regulations

7084. The registrar, with the approval of the director may adopt and promulgate the rules and regulations he deems necessary to carry out the provisions of this article.

ARTICLE 6.2. ARBITRATION

Arbitration

7085. (a) After investigating any verified complaint alleging a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement as defined in Section 7151 and finding a possible violation, the registrar may, with the concurrence of both the licensee and the complainant, refer the alleged violation, and any dispute between the licensee and the complainant arising thereunder, to arbitration pursuant to this article, provided the registrar finds that:

- (1) There is evidence that the complainant has suffered or is likely to suffer material damages as a result of a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement as defined in Section 7151.
- (2) There are reasonable grounds for the registrar to believe that the public interest would be better served by arbitration than by disciplinary action.
- (3) The licensee does not have a history of repeated or similar violations.
- (4) The licensee was in good standing at the time of the alleged violation.
- (5) The licensee does not have any outstanding disciplinary actions filed against him or her.
- (6) The parties have not previously agreed to private arbitration of the dispute pursuant to contract or otherwise.
- (7) The parties have been advised of the provisions of Section 2855 of the Civil Code.

For the purposes of paragraph (1), “material damages” means damages greater than seven thousand five hundred dollars (\$7,500) and less than fifty thousand dollars (\$50,000).

- (b) In all cases in which a possible violation of the sections set forth in paragraph (1) of subdivision (a) exists and the contract price is equal to or less than seven thousand five hundred dollars (\$7,500), or the demand for damages is equal to or less than seven thousand five hundred dollars (\$7,500) regardless of the contract price, the complaint shall be referred to arbitration, utilizing the criteria set forth in paragraphs (2) to (6), inclusive, of subdivision (a).

(Amended Stats 1998 Chapter 492 § 1 (SB 1792). Amended Stats 2002 Chapter 312 § 1 (AB 728)).

Awards

7085.2. An arbitrator may render an award and that award shall be deemed to be an order of the registrar.

Arbitration Notice

7085.3. Once the registrar determines that arbitration pursuant to subdivision (a) of Section 7085 would be a suitable means of resolving the dispute, the registrar shall notify the complainant and the licensee of this decision. The registrar shall also notify the complainant of the consequences of selecting administrative arbitration over judicial remedies and advise the parties of their rights to retain counsel at their own expense. The registrar shall forward an “agreement to arbitrate” to the complainant and the licensee. This agreement shall be returned to the registrar within 30 calendar days of the date that the agreement is mailed by the registrar. The return of this agreement by the parties shall authorize the registrar to proceed with administrative arbitration.

(Amended by Stats. 1989, Chapter 1132, eff. Sept. 29, 1989.)

Referral to Arbitration

7085.4. (a) For cases that the registrar determines to refer to arbitration under subdivision (a) of Section 7085, once the complainant and the licensee authorize the registrar to proceed with administrative arbitration, the registrar shall refer the agreement to arbitrate to an arbitrator or an arbitration association approved by the board.

- (b) Once the registrar determines that a complaint must be referred to arbitration pursuant to subdivision (b) of Section 7085, the registrar shall notify the complainant and the licensee of that decision. The registrar shall inform the parties of the consequences of administrative arbitration over judicial remedies and shall advise the parties of their right to retain counsel at their own expense if they so choose. The registrar shall forward a notice to arbitrate to the complainant and the licensee. This notice shall be returned to the registrar within 30 calendar days of the date that the notice is mailed by the registrar. The complainant’s failure to return an executed copy of the notice shall result in the closure of the complaint.

Notwithstanding Section 7085.5, a licensee’s failure to return an executed copy of the notice shall not prohibit the registrar from referring the dispute to arbitration or bar the registrar from issuing an order enforcing any award resulting therefrom, pursuant to Section 7085.6, whether the award resulted from a contested hearing or a noncontested hearing.

Rules of Arbitration

7085.5. Arbitrations of disputes arising out of cases filed with or by the board shall be conducted in accordance with the following rules:

- (a) All “agreements to arbitrate” shall include the names, addresses, and telephone numbers of the parties to the dispute, the issue in dispute, and the amount in dollars or any other remedy sought. The appropriate fee shall be paid by the board from the Contractors’ License Fund.
- (b) (1) The board or appointed arbitration association shall appoint an arbitrator in the following manner: immediately after the filing of the agreement to arbitrate, the board or appointed arbitration association shall submit simultaneously to each party to the dispute, an identical

list of names of persons chosen from the panel. Each party to the dispute shall have seven days from the mailing date in which to cross off any names to which it objects, number the remaining names to indicate the order of preference, and return the list to the board or appointed arbitration association. If a party does not return the list within the time specified, all persons named in the list are acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the board or appointed arbitration association shall appoint an arbitrator to serve. If the parties fail to agree on any of the parties named, if acceptable arbitrators are unable to act, or if, for any other reason, the appointment cannot be made from the submitted lists, the board or appointed arbitration association shall have the power to make the appointment from among other members of the panel without the submission of any additional lists. Each dispute shall be heard and determined by one arbitrator unless the board or appointed arbitration association, in its discretion, directs that a greater number of arbitrators be appointed.

(2) In all cases in which a complaint has been referred to arbitration pursuant to subdivision (b) of Section 7085, the board or the appointed arbitration association shall have the power to appoint an arbitrator to hear the matter.

(3) The board shall adopt regulations setting minimum qualification standards for listed arbitrators based upon relevant training, experience, and performance.

(c) No person shall serve as an arbitrator in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Prior to accepting an appointment, the prospective arbitrator shall disclose any circumstances likely to prevent a prompt hearing or to create a presumption of bias. Upon receipt of that information, the board or appointed arbitration association shall immediately replace the arbitrator or communicate the information to the parties for their comments. Thereafter, the board or appointed arbitration association shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

(d) The board or appointed arbitration association may appoint another arbitrator if a vacancy occurs, or if an appointed arbitrator is unable to serve in a timely manner.

(e) (1) The board or appointed arbitration association shall provide the parties with a list of the times and dates, and locations of the hearing to be held. The parties shall notify the arbitrator, within seven calendar days of the mailing of the list, of the times and dates convenient to each party. If the parties fail to respond to the arbitrator within the seven-day period, the arbitrator shall fix the time, place, and location of the hearing. An arbitrator may, at the arbitrator's sole discretion, make an inspection of the construction site which is the subject of the arbitration. The arbitrator shall notify the parties of the time and date set for the inspection. Any party who so desires may be present at the inspection.

(2) The board or appointed arbitration association shall fix the time, place, and location of the hearing for all cases

referred to arbitration pursuant to subdivision (b) of Section 7085. An arbitrator may, at the arbitrator's sole discretion, make an inspection of the construction site which is the subject of the arbitration. The arbitrator shall notify the parties of the time and date set for the inspection. Any party who desires may be present at the inspection.

(f) Any person having a direct interest in the arbitration is entitled to attend the hearing. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

(g) Hearings shall be adjourned by the arbitrator only for good cause.

(h) A record is not required to be taken of the proceedings. However, any party to the proceeding may have a record made at its own expense. The parties may make appropriate notes of the proceedings.

(i) The hearing shall be conducted by the arbitrator in any manner which will permit full and expeditious presentation of the case by both parties. Consistent with the expedited nature of arbitration, the arbitrator shall establish the extent of, and schedule for, the protection of relevant documents and other information, the identification of any witnesses to be called, and a schedule for any hearings to elicit facts solely within the knowledge of one party. The complaining party shall present its claims, proofs, and witnesses, who shall submit to questions or other examination. The defending party shall then present its defenses, proofs, and witnesses, who shall submit to questions or other examination. The arbitrator has discretion to vary this procedure but shall afford full and equal opportunity to the parties for the presentation of any material or relevant proofs.

(j) The arbitration may proceed in the absence of any party who, after due notice, fails to be present. The arbitrator shall require the attending party to submit supporting evidence in order to make an award. An award for the attending party shall not be based solely on the fact that the other party has failed to appear at the arbitration hearing.

(k) The arbitrator shall be the sole judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be required.

(l) The arbitrator may receive and consider documentary evidence. Documents to be considered by the arbitrator may be submitted prior to the hearing. However, a copy shall be simultaneously transmitted to all other parties and to the board or appointed arbitration association for transmittal to the arbitrator or board appointed arbitrator.

(m) The arbitrator shall specifically inquire of the parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the arbitrator shall declare the hearing closed and minutes thereof shall be recorded. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as requested by the arbitrator and the date set for their receipt

is later than that set for the receipt of briefs, the later date shall be the date of closing the hearings. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearings.

(n) The hearing may be reopened on the arbitrator's own motion. The arbitrator shall have 30 calendar days from the closing of the reopened hearing within which to make an award.

(o) Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with, and who fails to state his or her objections to the arbitrator in writing, within 10 calendar days of close of hearing, shall be deemed to have waived his or her right to object.

(p) (1) Except as provided in paragraph (2), any papers or process necessary or proper for the initiation or continuation of an arbitration under these rules and for any court action in connection therewith, or for the entry of judgment on an award made thereunder, may be served upon any party (A) by regular mail addressed to that party or his or her attorney at the parties' last known addresses, or (B) by personal service.

(2) Notwithstanding paragraph (1), in all cases referred to arbitration pursuant to subdivision (b) of Section 7085 in which the contractor fails or refuses to return an executed copy of the notice to arbitrate within the time specified, any papers or process specified in paragraph (1) to be sent to the contractor, including the notice of hearing, shall be mailed by certified mail to the contractor's address of record.

(q) The award shall be made promptly by the arbitrator, and unless otherwise agreed by the parties, no later than 30 calendar days from the date of closing the hearing, or if oral hearing has been waived, from the date of transmitting the final statements and proofs to the arbitrator. The arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The arbitrator shall notify the parties of any extension and the reason therefor.

(r) The arbitrator may grant any remedy or relief which the arbitrator deems just and equitable and within the scope of the board's referral and the requirements of the board including, but not limited to, specific performance of a contract. The arbitrator, in his or her sole discretion, may award costs or expenses.

(s) The award shall become final 30 calendar days from the date the arbitration award is issued. The arbitrator, upon written application of a party to the arbitration, may correct the award upon the following grounds:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, things, or property referred to in the award.

(2) There is any other clerical error in the award, not affecting the merits of the controversy.

An application for correction of the award shall be made within 10 calendar days of the date of service of the award by serving a copy of the application on the arbitra-

tor, and all other parties to the arbitration. Any party to the arbitration may make a written objection to the application for correction by serving a copy of the written objection on the arbitrator, the board, and all other parties to the arbitration, within 10 calendar days of the date of service of the application for correction.

The arbitrator shall either deny the application or correct the award within 30 calendar days of the date of service of the original award by mailing a copy of the denial or correction to all parties to the arbitration. Any appeal from the denial or correction shall be filed with a court of competent jurisdiction and a true copy thereof shall be filed with the arbitrator or appointed arbitration association within 30 calendar days of the issuance of the award, before the award becomes final. The award shall be in writing, and shall be signed by the arbitrator or a majority of them. If no appeal is filed within the 30-calendar day period, it shall become a final order of the registrar.

(t) Service of the award by certified mail shall be effective if a certified letter containing the award, or a true copy thereof, is mailed by the arbitrator or arbitration association to each party or to a party's attorney of record at their last known address, address of record, or by personally serving any party. Service may be proved in the manner authorized in civil actions.

(u) The expenses of one expert witness appointed by the board, when the services of an expert witness are requested by either party involved in arbitration pursuant to this article, shall be paid by the board. Parties who choose to present the findings of another expert witness as evidence shall pay for those services. Payment for expert witnesses appointed by the board shall be limited to the expert witness costs for inspection of the problem at the construction site, preparation of the expert witness' report, and expert witness fees for appearing or testifying at a hearing. All requests for payment to an expert witness shall be submitted on a form which has been approved by the registrar. All requests for payment to an expert witness shall be reviewed and approved by the board prior to payment. The registrar shall advise the parties that names of industry experts may be obtained by requesting this information from the registrar.

(v) The arbitrator shall interpret and apply these rules insofar as they relate to his or her powers and duties.

(w) The following shall apply as to court procedure and exclusion of liability:

(1) The board, the appointed arbitration association, or any arbitrator in a proceeding under these rules is not a necessary party in judicial proceedings relating to the arbitration.

(2) Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(3) The board, the appointed arbitration association, or any arbitrator is not liable to any party for any act or omission in connection with any arbitration conducted under these rules.

(Amended by Stats. Stats. 1998, Chapter 492 (SB 1792).)

Failure to Comply

7085.6. The failure of a licensee to comply with an arbitration award rendered under this article shall result in the automatic suspension of a license by operation of law. The registrar shall notify the licensee by certified mail of the failure to comply with the arbitrator's award, and that the license shall be automatically suspended 30 calendar days from the date of that notice. The licensee may appeal the suspension for noncompliance within 15 calendar days after service of the notice by written notice to the registrar. Reinstatement may be made at any time following the suspension by complying with the arbitrator's award and the final order of the registrar. If no reinstatement of the license is made within one year of the date of the automatic suspension, the license and any other contractors' license issued to the licensee shall be automatically revoked by operation of law for a period to be determined by the registrar pursuant to Section 7102. The licensee shall be automatically prohibited from serving as an officer, director, associate, partner, or qualifying individual of another licensee, for the period determined by the registrar and the employment, election, or association of such a person by another licensee shall constitute grounds for disciplinary action. Any qualifier disassociated pursuant to this section shall be replaced within 90 days from the date of disassociation. Upon failure to replace the qualifier within 90 days of the disassociation, the license of the other licensee shall be automatically suspended or the qualifier's classification removed at the end of the 90 days.

Enforcement of Award

7085.7. A complainant may enforce an arbitrator's award in accordance with Chapter 2 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

Disclosure of Complaint

7085.9. Notwithstanding any other provision of law, a complaint referred to arbitration pursuant to Section 7085 is not subject to disclosure to the public until such time as an investigation into an alleged violation of Section 7085.6 has been initiated by the registrar.

(Added by Stats. 1988, Chapter 1035.)

ARTICLE 7. DISCIPLINARY PROCEEDINGS

Jurisdiction; Failure to Obtain Building Permits

7090. The registrar may upon his or her own motion and shall upon the verified complaint in writing of any person, investigate the actions of any applicant, contractor, or home improvement salesperson within the state and may deny the licensure or the renewal of licensure of, or cite, temporarily suspend, or permanently revoke any license or registration if the applicant, licensee, or registrant, is guilty of or commits any one or more of the acts or omissions constituting causes for disciplinary action.

The registrar may proceed to take disciplinary action as in this article provided against an applicant or a person licensed or registered under the provisions of this chapter

even though the grounds or cause for such disciplinary action arose upon projects or while the applicant, licensee, or registrant was acting in a capacity or under circumstances or facts which, under the provisions of Sections 7044, 7045, 7046, and 7048, would otherwise exempt the person or his or her operations from the provisions of this chapter.

Notwithstanding any provision of this chapter, if the registrar finds that any contractor licensed or registered under the provisions of this chapter has willfully and deliberately violated any state or local law relating to the issuance of building permits, other than failure to obtain a county or city permit for repair, maintenance, and adjustment of equipment where such repair, maintenance, or adjustment is valued at less than five hundred dollars (\$ 500) for labor or materials, or where the repair of a part or component part of mechanical equipment consists of replacing such part or component part of mechanical equipment in need of repair with the identical part or component part, the registrar shall take disciplinary action against the contractor's license in accordance with this chapter.

For the purpose of this section, there shall be a rebuttable presumption affecting the burden of proof that construction performed without a permit is a willful and deliberate violation.

Failure to Pay a Civil Penalty or Comply with an Order of Correction; Effect

7090.1. Notwithstanding any other provisions of law, the failure to pay a civil penalty, or to comply with an order of correction or an order to pay a specified sum to an injured party in lieu of correction once the order has become final, shall result in the automatic suspension of a license by operation of law 30 days after noncompliance with the terms of the order. The registrar shall notify the licensee in writing of the failure to comply with the final order and that the license shall be suspended 30 days from the date of the notice. The licensee may contest the determination of noncompliance within 15 days after service of the notice, by written notice to the registrar. Upon receipt of the written notice, the registrar may reconsider the determination and after reconsideration may affirm or set aside the suspension. Reinstatement may be made at any time following the suspension by complying with the final order of the citation. If no reinstatement of the license is made within one year of the date of the automatic suspension, the cited license and any other contractors' license issued to the licensee shall be automatically revoked by operation of law for a period to be determined by the registrar pursuant to Section 7102. The cited licensee shall also be automatically prohibited from serving as an officer, director, associate, partner, or qualifying individual of another licensee, for the period determined by the registrar, and the employment, election, or association of such a person by a licensee shall constitute grounds for disciplinary action. Any qualifier disassociated pursuant to this section shall be replaced within 90 days of the date of disassociation. Upon failure to replace the qualifier within 90 days of the prohibition, the license of the other licensee shall be automatically suspended or the qualifier's classification removed at the end of the 90 days.

Actions Despite Corrections of Conditions; Fraud and Repeated Acts

7090.5. In the event a licensee commits a fraudulent act which is a ground for disciplinary action under Section 7116 of this article, the correction of any condition resulting from such act shall not in and of itself preclude the registrar from taking disciplinary action under this article.

If the registrar finds a licensee has engaged in repeated acts which would be grounds for disciplinary action under this article, and if by correction of conditions resulting from those acts the licensee avoided disciplinary action as to each individual act, the correction of those conditions shall not in and of itself preclude the registrar from taking disciplinary action under this article.

Time for Action; Powers and Proceedings

7091. (a) A complaint against a licensee alleging commission of any patent acts or omissions that may be grounds for legal action shall be filed in writing with the registrar within four years after the act or omission alleged as the ground for the disciplinary action. An accusation or citation against a licensee shall be filed or a referral to the arbitration program outlined in Section 7085 shall be referred within four years after the patent act or omission alleged as the ground for disciplinary action or arbitration or within 18 months from the date of the filing of the complaint with the registrar, whichever is later, except that with respect to an accusation alleging a violation of Section 7112, the accusation may be filed within two years after the discovery by the registrar or by the board of the alleged facts constituting the fraud or misrepresentation prohibited by the section.

(b) A complaint against a licensee alleging commission of any latent acts or omissions that may be grounds for legal action pursuant to subdivision (a) of Section 7109 regarding structural defects, as defined by regulation, shall be filed in writing with the registrar within 10 years after the act or omission alleged as the ground for the disciplinary action. An accusation and citation against a licensee shall be filed within 10 years after the latent act or omission alleged as the ground for disciplinary action or within 18 months from the date of the filing of the complaint with the registrar, whichever is later, except that with respect to an accusation alleging a violation of Section 7112, the accusation may be filed within two years after the discovery by the registrar or by the board of the alleged facts constituting the fraud or misrepresentation prohibited by Section 7112. As used in this section "latent act or omission" means an act or omission that is not apparent by reasonable inspection.

(c) An accusation regarding an alleged breach of an express, written warranty for a period in excess of the time periods specified in subdivisions (a) and (b) issued by the contractor shall be filed within the duration of that warranty.

(d) The proceedings under this article shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2

of the Government Code, and the registrar shall have all the powers granted therein.

(e) Nothing in this section shall be construed to affect the liability of a surety or the period of limitations prescribed by law for the commencement of actions against a surety or cash deposit.

(Amended Stats 1994 Chapter 1135 § 2 (AB 3302); Stats 2001 Chapter 728 § 60 (SB 724). Amended Stats 2002 Chapter 312 § 3 (AB 728).)

Contractors' State License Board Enforcement Program Monitor; Appointment

Repeal operative April 1, 2003

7092.(a)(1) The director shall appoint a Contractors' State License Board Enforcement Program Monitor no later than January 31, 2001. The director may retain a person for this position by a personal services contract, the Legislature finding, pursuant to Section 19130 of the Government Code, that this is a new state function.

(2) The director shall supervise the enforcement program monitor and may terminate or dismiss him or her from this position.

(b) The director shall advertise the availability of this position. The requirements for this position include experience in conducting investigations and familiarity with state laws, rules, and procedures pertaining to the board and familiarity with relevant administrative procedures.

(c)(1) The enforcement program monitor shall monitor and evaluate the Contractors' State License Board disciplinary system and procedures, making as his or her highest priority the reform and reengineering of the board's enforcement program and operations, and the improvement of the overall efficiency of the board's disciplinary system.

(2) This monitoring duty shall be on a continuing basis for a period of no more than two years from the date of the enforcement program monitor's appointment and shall include, but not be limited to, improving the quality and consistency of complaint processing and investigation and reducing the timeframes for each, reducing any complaint backlog, assuring consistency in the application of sanctions or discipline imposed on licensees, and shall include the following areas: the accurate and consistent implementation of the laws and rules affecting discipline, staff concerns regarding disciplinary matters or procedures, appropriate utilization of licensed professionals to investigate complaints, and the board's cooperation with other governmental entities charged with enforcing related laws and regulations regarding contractors.

(3) The enforcement program monitor shall exercise no authority over the board's discipline operations or staff; however, the board and its staff shall cooperate with him or her, and the board shall provide data, information, and case files as requested by the enforcement program monitor to perform all of his or her duties.

(4) The director shall assist the enforcement program monitor in the performance of his or her duties, and the enforcement program monitor shall have the same investigative authority as the director.

(d) The enforcement program monitor shall submit an initial written report of his or her findings and conclusions to the board, the department, and the Legislature no later than October 1, 2001, and every six months thereafter, and be available to make oral reports to each, if requested to do so. The enforcement program monitor may also provide additional information to either the department or the Legislature at his or her discretion or at the request of either the department or the Legislature. The enforcement program monitor shall make his or her reports available to the public or the media. The enforcement program monitor shall make every effort to provide the board with an opportunity to reply to any facts, findings, issues, or conclusions in his or her reports with which the board may disagree.

(e) The board shall reimburse the department for all of the costs associated with the employment of an enforcement program monitor.

(f) This section shall remain in effect only until April 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before April 1, 2003, deletes or extends that date.

(Amended Stats 2001 Chapter 159 § 26 (SB 662), Chapter 615 § 10 (SB 26), effective October 9, 2001, repealed January 1, 2003; Stats 2002 Chapter 744 § 7 (SB 1953), repealed April 1, 2003.)

Decisions and Penalties

7095. The decision may:

- (a) Provide for the immediate complete suspension by the licensee of all operations as a contractor during the period fixed by the decision.
- (b) Permit the licensee to complete any or all contracts shown by competent evidence taken at the hearing to be then uncompleted.
- (c) Impose upon the licensee compliance with such specific conditions as may be just in connection with his operations as a contractor disclosed at the hearing and may further provide that until such conditions are complied with no application for restoration of the suspended or revoked license shall be accepted by the registrar.

“Licensee” Defined

7096. For the purposes of this chapter, the term “licensee” shall include an individual, copartnership, corporation, joint venture, or any combination or organization licensed under this chapter, and shall also include any named responsible managing officer or member of the personnel of such licensee whose appearance has qualified the licensee under the provisions of Section 7068.

Suspension of Additional Licenses

7097. Notwithstanding the provisions of Sections 7121 and 7122, when any license has been suspended by a decision of the registrar pursuant to an accusation or pursuant to subdivision (b) of Section 7071.17, Section 7085.6 or 7090.1, any additional license issued under this chapter in the name of the licensee or for which the licensee furnished qualifying experience and appearance under the provisions of Section 7068, may be suspended by the registrar without further notice.

Revocation of Additional Licenses

7098. Notwithstanding the provisions of Sections 7121 and 7122, when any license has been revoked under the provisions of this chapter, any additional license issued under this chapter in the name of the licensee or for which the licensee furnished qualifying experience and appearance under the provisions of Section 7068, may be revoked by the registrar without further notice.

(Amended Stats. 1995, Chapter 467 (SB 1061).)

Citation

7099. If, upon investigation, the registrar has probable cause to believe that a licensee, or an applicant for a license under this chapter, has committed any acts or omissions which are grounds for denial, revocation, or suspension of license, he or she may, in lieu of proceeding pursuant to this article, issue a citation to the licensee or applicant. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions alleged to have been violated. In addition, each citation may contain an order of correction fixing a reasonable time for correction of the violation or an order, against the licensee only, for payment of a specified sum to an injured party in lieu of correction, and may contain an assessment of a civil penalty.

Order of Correction

7099.1. The board shall promulgate regulations covering the formulation of an order of correction which gives due consideration to the time required to correct and the practical feasibility of correction.

Civil Penalties

7099.2. (a) The board shall promulgate regulations covering the assessment of civil penalties under this article which give due consideration to the appropriateness of the penalty with respect to the following factors:

- (1) The gravity of the violation.
- (2) The good faith of the licensee or applicant for licensure being charged.
- (3) The history of previous violations.

(b) Except as otherwise provided by this chapter, no civil penalty shall be assessed in an amount greater than two thousand dollars (\$ 2,000). A civil penalty not to exceed fifteen thousand dollars (\$ 15,000) may be assessed for a violation of Section 7114 or 7118.

Appeal

7099.3. Any licensee or applicant for licensure served with a citation pursuant to Section 7099, may appeal to the registrar within 15 working days from service of the citation with respect to violations alleged by the registrar, correction periods, amount of penalties, and the reasonableness of the change required by the registrar to correct the condition.

Failure to Contest Citation

7099.4. If within 15 working days from service of the citation issued by the registrar, the licensee or applicant for

licensure fails to notify the registrar that he or she intends to contest the citation, the citation shall be deemed a final order of the registrar and not be subject to review by any court or agency. The 15-day period may be extended by the registrar for cause.

Notice of Intent to Contest Citation

7099.5. If a licensee or applicant for licensure notifies the registrar that he or she intends to contest a citation issued under Section 7099, the registrar shall afford an opportunity for a hearing. The registrar shall thereafter issue a decision, based on findings of fact, affirming, modifying, or vacating the citation or penalty, or directing other appropriate relief. The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the registrar shall have all the powers granted therein.

Failure to Comply

7099.6. (a) The failure of a licensee to comply with a citation after it is final is a ground for suspension or revocation of license.

(b) The failure of an applicant for licensure to comply with a citation after it is final is a ground for denial of license.

Bond Exemption from Civil Penalty

7099.7. No order for payment of a civil penalty shall be made against any bond required pursuant to Sections 7071.5 to 7071.8.

Advertising Without Proper License in Alphabetical or Classified Directory

7099.10. (a) If, upon investigation, the registrar has probable cause to believe that a licensee, an applicant for a license, or an unlicensed individual acting in the capacity of a contractor who is not otherwise exempted from the provisions of this chapter, has violated Section 7027.1 by advertising for construction or work of improvement covered by this chapter in an alphabetical or classified directory, without being properly licensed, the registrar may issue a citation under Section 7099 containing an order of correction which requires the violator to cease the unlawful advertising and to notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising, and that subsequent calls to that number shall not be referred by the telephone company to any new telephone number obtained by that person.

(b) If the person to whom a citation is issued under subdivision (a) notifies the registrar that he or she intends to contest the citation, the registrar shall afford an opportunity for a hearing, as specified in Section 7099.5, within 90 days after receiving the notification.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after the order is final, the registrar shall inform the Public Utilities Commission of the violation, and the Public Utilities Commission shall

require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

Asbestos-Related Work; Advertisements; Penalty

7099.11. (a) No person shall advertise, as that term is defined in Section 7027.1, to promote his or her services for the removal of asbestos unless he or she is certified to engage in asbestos-related work pursuant to Section 7058.5, and registered for that purpose pursuant to Section 6501.5 of the Labor Code. Each advertisement shall include that person's certification and registration numbers and shall use the same name under which that person is certified and registered.

(b) The registrar shall issue a notice to comply with the order of correction provisions of subdivision (a) of Section 7099.10, to any person who is certified and registered, as described in subdivision (a), and who fails to include in any advertisement his or her certification and registration numbers.

(c) The registrar shall issue a citation pursuant to Section 7099 to any person who fails to comply with the notice required by subdivision (b), or who advertises to promote his or her services for the removal of asbestos but does not possess valid certification and registration numbers as required by subdivision (a), or who fails to use in that advertisement the same name under which he or she is certified and registered.

Citations shall be issued and conducted pursuant to Sections 7099 to 7099.10, inclusive.

Bond Required to Stay Registrar's Decision

7100. In any proceeding for review by a court, the court may in its discretion, upon the filing of a proper bond by the licensee in an amount to be fixed by the court, but not less than one thousand dollars (\$1,000) or an amount the court finds is sufficient to protect the public, whichever is greater, guaranteeing the compliance by the licensee with specific conditions imposed upon him by the registrar's decision, if any, permit the licensee to continue to do business as a contractor pending entry of judgment by the court in the case. There shall be no stay of the registrar's decision pending an appeal or review of any such proceeding unless the appellant or applicant for review shall file a bond in all respects conditioned as, and similar to, the bond required to stay the effect of the registrar's decision in the first instance.

Reinstatement of Suspended or Revoked License

7102. After suspension of the license upon any of the grounds set forth in this chapter, the registrar may reinstate the license upon proof of compliance by the contractor with all provisions of the decision as to reinstatement or, in the absence of such decision or any provisions therein as to

reinstatement, in the sound discretion of the registrar.

After revocation of a license upon any of the grounds set forth in this chapter, the license shall not be reinstated or reissued and a license shall not be issued to any member of the personnel of the revoked licensee found to have had knowledge of or participated in the acts or omissions constituting grounds for revocation, within a minimum period of one year and a maximum period of five years after the final decision of revocation and then only on proper showing that all loss caused by the act or omission for which the license was revoked has been fully satisfied and that all conditions imposed by the decision of revocation have been complied with.

The board shall promulgate regulations covering the criteria to be considered when extending the minimum one-year period. The criteria shall give due consideration to the appropriateness of the extension of time with respect to the following factors:

- (a) The gravity of the violation.
- (b) The history of previous violations.
- (c) Criminal convictions.

When any loss has been reduced to a monetary obligation or debt, however, the satisfaction of such monetary obligation or debt as a prerequisite for the issuance, reissuance, or reinstatement of a license shall not be required where such monetary obligation or debt has been adjudicated in a bankruptcy proceeding. However, any nonmonetary condition not adjudicated in a bankruptcy proceeding shall be complied with prior to the issuance, the reissuance, or reinstatement of the license.

Effect of Disciplinary Action by Another State

7103. The revocation, suspension, or other disciplinary action of a license to act as a contractor by another state shall constitute grounds for disciplinary action in this state if the individual is a licensee, or applies for a license, in this state. A certified copy of the revocation, suspension, or other disciplinary action by the other state is conclusive evidence of that action.

Notice to Complainant of Resolution of Complaint

7104. When the board resolves a complaint, the board shall notify the complainant in writing of its action and the reasons for taking that action. The board shall provide the same notice in writing to the contractor provided that the contractor is licensed and the notification would not jeopardize an action or investigation that involves the contractor.

Consolidation in Court Action

7106. The suspension or revocation of license as in this chapter provided may also be embraced in any action otherwise proper in any court involving the licensee's performance of his legal obligation as a contractor.

Continuing Jurisdiction Over License

7106.5. The expiration, cancellation, forfeiture, or suspension of a license by operation of law or by order or decision of the registrar or a court of law, or the voluntary

surrender of a license by a licensee shall not deprive the registrar of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against the license, or to render a decision suspending or revoking the license.

(Amended by Stats 2002 Chapter 1013 § 61.3 (SB 2026).)

Abandonment

7107. Abandonment without legal excuse of any construction project or operation engaged in or undertaken by the licensee as a contractor constitutes a cause for disciplinary action.

Misuse of Funds

7108. Diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, or failure substantially to account for the application or use of such funds or property on the construction project or operation for which such funds or property were received constitutes a cause for disciplinary action.

See Penal Code Section 484b, Wrongful Diversion of Public Funds, a Public Offense, in Appendix.

Prime Building Contractors and Subcontractors; Payment Requirement

7108.5. A prime contractor or subcontractor shall pay to any subcontractor, not later than 10 days of receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, then the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.

Any violation of this section shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

The sanctions authorized under this section shall be separate from, and in addition to, all other remedies either civil, administrative, or criminal.

This section applies to all private works of improvement and to all public works of improvement, except where Section 10262 of the Public Contract Code applies.

See Public Contract Code Section 10262, in the Appendix.

Failure to Pay Transportation Charges Submitted by Dump Truck Carrier

7108.6. A licensed contractor is required to pay all transportation charges submitted by a duly authorized motor carrier of property in dump truck equipment by the 20th day following the last day of the calendar month in which the transportation was performed, if the charges, including all

necessary documentation, are submitted by the fifth day following the last day of the calendar month in which the transportation was performed. The payment shall be made unless otherwise agreed to in writing by the contractor and by the duly authorized motor carrier of property in dump truck equipment. In the event that there is a good faith dispute over a portion of the charges claimed, the contractor may withhold payment of up to 150 percent of the disputed amount or an amount otherwise agreed to by the parties. A violation of this section constitutes a cause for disciplinary action under Section 7120 and shall also subject the contractor licensee to a penalty, payable to the carrier, of 2 percent of the amount due per month for every month that payment is outstanding. In an action for the collection of moneys not paid in accordance with this section, the prevailing party shall be entitled to his or her attorney's fees and costs.

This section applies to all private works of improvement and to all public works of improvement.

Departure from Accepted Trade Standards; Departure From or Disregard of Plans or Specifications

7109. (a) A willful departure in any material respect from accepted trade standards for good and workmanlike construction constitutes a cause for disciplinary action, unless the departure was in accordance with plans and specifications prepared by or under the direct supervision of an architect.

(b) A willful departure from or disregard of plans or specifications in any material respect, which is prejudicial to another, without the consent of the owner or his or her duly authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans or specifications, constitutes a cause for disciplinary action.

See Business & Professions Code Section 8556 Removal and Replacement of Pest Damage Areas; Application of Wood Preservatives: Contracting for Performance of Soil Treatment Pest Control Work, in Appendix.

Violation of Safety Orders

7109.5. Violation of any safety provision in, or authorized by, Division 5 (commencing with Section 6300) of the Labor Code resulting in death or serious injury to an employee constitutes a cause for disciplinary action.

Violations; Disciplinary Action

7110. Willful or deliberate disregard and violation of the building laws of the state, or of any political subdivision thereof, or of Section 8505 or 8556 of this code, or of Sections 1689.5 to 1689.8, inclusive, or Sections 1689.10 to 1689.13, inclusive, of the Civil Code, or of the safety laws or labor laws or compensation insurance laws or Unemployment Insurance Code of the state, or violation by any licensee of any provision of the Health and Safety Code or Water Code, relating to the digging, boring, or drilling of water wells, or Article 2 (commencing with

Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code, constitutes a cause for disciplinary action.

(Amended by Stats 1994 Chapter 362 § 1 (AB 2719); Stats 2002 Chapter 1013 § 61.5 (SB 2026).)

See Public Contract Code Sections 4107 and 4110.

Violation of Labor Code; Requiring Release of Claim for Wages

7110.1. The requiring of an execution of release of any claim or the causing of the execution of any such release in violation of Section 206.5 of the Labor Code is a cause for disciplinary action.

See Labor Code Section 206.5, Violation: Release of Claim for Wages, in Appendix.

Violations; Disciplinary Action

7110.5. Upon receipt of a certified copy of the Labor Commissioner's finding of a willful or deliberate violation of the Labor Code by a licensee, pursuant to Section 98.9 of the Labor Code, the registrar shall initiate formal disciplinary action against such licensee within 30 days of notification.

Preservation of Records

7111. (a) Failure to make and keep records showing all contracts, documents, records, receipts, and disbursements by a licensee of all of his or her transactions as a contractor, and failure to have those records available for inspection by the registrar or his or her duly authorized representative for a period of not less than five years after completion of any construction project or operation to which the records refer, or refusal by a licensee to comply with a written request of the registrar to make the records available for inspection constitutes a cause for disciplinary action.

(b) Failure of a licensee, applicant, or registrant subject to the provisions of this chapter, who without lawful excuse, delays, obstructs, or refuses to comply with a written request of the registrar or designee for information or records, to provide that information or make available those records, when the information or records are required in the attempt to discharge any duty of the registrar, constitutes a cause for disciplinary action.

(Amended by Stats. 1991, Chapter 1160 (AB 2190).)

Failure of Licensee to Cooperate in Investigation of Complaint; Effect

7111.1. The failure of, or refusal by, a licensee to respond to a written request of the registrar to cooperate in the investigation of a complaint against that licensee constitutes a cause for disciplinary action.

Omission or Misrepresentation of Facts

7112. Omission or misrepresentation of a material fact by an applicant or a licensee in obtaining, or renewing a license, or in adding a classification to an existing license constitutes a cause for disciplinary action.

(Amended by Stats. 2001, Chapter 728 (SB 724).)

Misrepresentation of Facts; Classification Expunged from Record

7112.1. Any classification that has been added to an existing license record as a result of an applicant or licensee omitting or misrepresenting a material fact shall be expunged from the license record pursuant to a final order of the registrar evidencing a violation of Section 7112.

(Added by Stats. 2001, Chapter 728 (SB 724).)

Violation of Contracts

7113. Failure in a material respect on the part of a licensee to complete any construction project or operation for the price stated in the contract for such construction project or operation or in any modification of such contract constitutes a cause for disciplinary action.

Lawful Obligations, Settlement of

7113.5. The avoidance or settlement by a licensee for less than their full amount of the lawful obligations of such licensee incurred as a contractor, whether by (a) composition, arrangement, or reorganization with creditors under state law, (b) composition, arrangement, or reorganization with creditors under any agreement or understanding, (c) receivership as provided in Chapter 5 (commencing at Section 564) of Title 7 of Part 2 of the Code of Civil Procedure, (d) assignment for the benefit of creditors, (e) trusteeship, or (f) dissolution constitutes a cause for disciplinary action.

This section shall not apply to an individual settlement of the obligation of a licensee by such licensee with a creditor which is not a part of or in connection with a settlement with other creditors of such licensee.

No disciplinary action shall be commenced against a licensee for avoiding or settling in bankruptcy, or by composition, arrangement, or reorganization with creditors under federal law, the licensee's lawful obligations incurred as a contractor for less than the full amount of such obligations.

Unlicensed Persons (Also see Sec. 7118)

7114. Aiding or abetting an unlicensed person to evade the provisions of this chapter or combining or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or associate, or otherwise, of an unlicensed person with the intent to evade the provisions of this chapter constitutes a cause for disciplinary action.

Certifying to Falsified Experience; Effect

7114.1 Any licensee whose signature appears on a falsified certificate in support of an examinee's experience qualifications, or otherwise certifying to false or misleading experience claims by an applicant, which have been submitted to obtain a contractor's license shall be subject to disciplinary action.

Violation of This Law

7115. Failure in any material respect to comply with the provisions of this chapter, or any rule or regulation adopted

pursuant to this chapter, or to comply with the provisions of Section 7106 of the Public Contract Code, constitutes a cause for disciplinary action.

(Amended by Stats. 1991, Chapter 1160 (AB 2190).)

Fraud

7116. The doing of any willful or fraudulent act by the licensee as a contractor in consequence of which another is substantially injured constitutes a cause for disciplinary action.

Variance from License as to Name or Personnel

7117. Acting in the capacity of a contractor under any license issued hereunder except: (a) in the name of the licensee as set forth upon the license, or (b) in accordance with the personnel of the licensee as set forth in the application for such license, or as later changed as provided in this chapter, constitutes a cause for disciplinary action.

Inactive License; Contracting; Penalty

7117.5. (a) Acting in the capacity of a contractor under any license which has been made inactive, as provided in Section 7076.5, constitutes a cause for disciplinary action.

(b) Acting in the capacity of a contractor under any license that has been suspended for any reason constitutes a cause for disciplinary action.

(c) Acting in the capacity of a contractor under any license that has expired constitutes a cause for disciplinary action if the license is subject to renewal pursuant to Section 7141. The actions authorized under this section shall be separate from, and in addition to, all other remedies either civil or criminal.

(Amended Stats. 1995, Chapter 467 (SB 1061).)

Contracting out of Classification; Effect

7117.6. Acting in the capacity of a contractor in a classification other than that currently held by the licensee constitutes a cause for disciplinary action.

Unlicensed Persons

7118. Entering into a contract with a contractor while such contractor is not licensed as provided in this chapter constitutes a cause for disciplinary action.

Contractors; Asbestos-Related Inspection; Disclosure of Any Financial Relationship to Entity Performing Corrective Work; Violations; Offense

7118.4. Contractors; asbestos-related inspection with knowledge of report being required condition for loan or permit concerning the property; disclosure of any financial relationship to entity performing corrective work; violations; offense

(a) If a contractor has made an inspection for the purpose of determining the presence of asbestos or the need for related remedial action with knowledge that the report has been required by a person as a condition of making a loan of money secured by the property, or is required by a public entity as a condition of issuing a permit concerning

the property, the contractor shall disclose orally and in writing if it is owned or has any common ownership, or any financial relationship whatsoever, including, but not limited to, commissions or referral fees, with an entity in the business of performing the corrective work.

(b) This section does not prohibit a contractor that has contracted to perform corrective work after the report of another company has indicated the presence of asbestos or the need for related remedial action from making its own inspection prior to performing that corrective work or from making an inspection to determine whether the corrective measures were successful and, if not, thereafter performing additional corrective work.

(c) A violation of this section is grounds for disciplinary action.

(d) A violation of this section is a misdemeanor punishable by a fine of not less than three thousand dollars (\$3,000) and not more than five thousand dollars (\$5,000), or by imprisonment in the county jail for not more than one year, or both.

(e) For the purpose of this section, “asbestos” has the meaning set forth in Section 6501.7 of the Labor Code.

Asbestos-Related Work; Contracting with Uncertified Contractor; Fines and Penalties

7118.5. Any contractor, applicant for licensure, or person required to be licensed, who, either knowingly or negligently, or by reason of a failure to inquire, enters into a contract with another person who is required to be, and is not, certified pursuant to Section 7058.5 to engage in asbestos-related work, as defined in Section 6501.8 of the Labor Code, is subject to the following penalties:

(a) Conviction of a first offense is an infraction punishable by a fine of not less than one thousand dollars (\$1,000) or more than three thousand dollars (\$3,000), and by possible revocation or suspension of any contractor’s license.

(b) Conviction of a subsequent offense is a misdemeanor requiring revocation or suspension of any contractor’s license, and a fine of not less than three thousand dollars (\$3,000) or more than five thousand dollars (\$5,000), or imprisonment in the county jail for not more than one year, or both the fine and imprisonment.

Contracting with Uncertified Person for Removal or Remedial Action; Penalties

7118.6. Any contractor who, either knowingly or negligently, or by reason of a failure to inquire, enters into a contract with another person who is required to be, and is not certified pursuant to Section 7058.7 to engage in a removal or remedial action, as defined in Section 7058.7, is subject to the following penalties:

(a) Conviction of a first offense is an infraction punishable by a fine of not less than one thousand dollars (\$1,000) or more than three thousand dollars (\$3,000), and by possible revocation or suspension of any contractor’s license.

(b) Conviction of a subsequent offense is a misdemeanor requiring revocation or suspension of any contractor’s license, and a fine of not less than three thousand dollars

(\$3,000) or more than five thousand dollars (\$5,000), or imprisonment in the county jail for not more than one year, or both the fine and imprisonment.

(Amended by Stats. 1991, Chapter 1160 (AB 2190).)

Lack of Reasonable Diligence

7119. Wilful failure or refusal without legal excuse on the part of a licensee as a contractor to prosecute a construction project or operation with reasonable diligence causing material injury to another constitutes a cause for disciplinary action.

Withholding Money

7120. Willful or deliberate failure by any licensee or agent or officer thereof to pay any moneys, when due for any materials or services rendered in connection with his operations as a contractor, when he has the capacity to pay or when he has received sufficient funds therefor as payment for the particular construction work, project, or operation for which the services or materials were rendered or purchased constitutes a cause for disciplinary action, as does the false denial of any such amount due or the validity of the claim thereof with intent to secure for himself, his employer, or other person, any discount upon such indebtedness or with intent to hinder, delay, or defraud the person to whom such indebtedness is due.

Prohibition Against Association of Suspended or Revoked Licensee

7121. Any person who has been denied a license, or who has had his license revoked, or whose license is under suspension, or who has failed to renew his license while it was under suspension, or who has been a member, officer, director, or associate of any partnership, corporation, firm or association whose application for a license has been denied, or whose license has been revoked, or whose license is under suspension, or who has failed to renew a license while it was under suspension, and while acting as such member, officer, director, or associate had knowledge of or participated in any of the prohibited acts for which the license was denied, suspended or revoked, shall be prohibited from serving as an officer, director, associate, partner or qualifying individual of a licensee, and the employment, election or association of such person by a licensee shall constitute grounds for disciplinary action.

Responsibility of Disassociated Member, Officer, Director, or Associate for Compliance With Citation

7121.1. Notwithstanding any other provision of this chapter, the disassociation of any member, officer, director, or associate from the license of any partnership, corporation, firm, or association whose license has been cited pursuant to Section 7099 shall not relieve the member, officer, director, or associate from responsibility for complying with the citation if he or she had knowledge of, or participated in, any of the prohibited acts for which the citation was issued. Section 7121 shall apply to any member, officer, director, or associate of a licensee that fails to comply with a citation after it is final.

Qualifier on a Revoked or Suspended License; Prohibitions and Effect

7121.5. Any person who was the qualifying individual on a revoked license, or of a license under suspension, or of a license that was not renewed while it was under suspension, shall be prohibited from serving as an officer, director, associate, partner, or qualifying individual of a licensee, whether or not the individual had knowledge of or participated in the prohibited acts or omissions for which the license was revoked, or suspended, and the employment, election, or association of such person by a licensee shall constitute grounds for disciplinary action.

Participation in Violation

7122. The performance by any individual, partnership, corporation, firm, or association of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee other than the individual qualifying on behalf of the individual or entity, if the licensee was a member, officer, director, or associate of such individual, partnership, corporation, firm or association at the time such act or omission occurred, and had knowledge of or participated in such prohibited act or omission.

Responsibility for Compliance With Citation

7122.1 Notwithstanding Section 7068.2 or any other provision of this chapter, the disassociation of any qualifying partner, responsible managing officer, or responsible managing employee from a license that has been cited pursuant to Section 7099 shall not relieve the qualifying partner, responsible managing officer, or responsible managing employee from responsibility for complying with the citation. Section 7122.5 shall apply to any qualifying partner, responsible managing officer, or responsible managing employee of a licensee that fails to comply with a citation after it is final.

Responsibility for Compliance with Arbitration Award following Disassociation

7122.2. Notwithstanding Section 7068.2 or any other provisions of this chapter, the disassociation of any qualifying partner, responsible managing officer, or responsible managing employee from a license that has been referred to arbitration pursuant to Section 7085 shall not relieve the qualifying partner, responsible managing officer, or responsible managing employee from responsibility for complying with the award rendered as a result of an arbitration referral. Section 7122.5 shall apply to any qualifying partner, responsible managing officer, or responsible managing employee of a licensee that fails to comply with an arbitration award once it is rendered.

(Added Stats 2002 Chapter 312 § 4 (AB 728).)

Responsibility of Qualifying Person

7122.5. The performance by any individual, partnership, corporation, firm, or association of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee who at the time such act or omission occurred was

the responsible managing employee, qualifying partner, responsible managing officer, or qualifying member of such individual, partnership, corporation, firm, or association, whether or not he had knowledge of or participated in the prohibited act or omission.

Conviction as Cause for Disciplinary Action; Evidence

7123. A conviction of a crime substantially related to the qualifications, functions and duties of a contractor constitutes a cause for disciplinary action. The record of the conviction shall be conclusive evidence thereof.

Violation of Overpricing Following an Emergency or Disaster

7123.5 If a contractor is convicted of violating Section 396 of the Penal Code or any substantially similar local ordinance in connection with the sale, or offer for sale, of repair or reconstruction services, as defined in Section 396 of the Penal Code, the Contractors' State License Board shall take disciplinary action against the contractor, which shall include a suspension of at least six months or the permanent revocation of the contractor's license.

See Penal Code Section 396, Unlawful Price Increase Following a Declared State of Emergency, in Appendix.

Nolo Contendere

7124. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

Public Disclosure of Complaints

7124.5. The board shall not make public disclosure of complaints against a licensee except pursuant to a uniform policy if adopted by the Department of Consumer Affairs, after public hearings, which is applicable to all boards, bureaus, commissions, divisions, offices, or officers subject to the jurisdiction of the department.

Disclosure of General Information Regarding Complaints Against Licensees

7124.6. (a) The registrar shall make available to members of the public the date, nature and status of all complaints on file against a licensee that do either of the following:

(1) Have been referred for accusation.

(2) Have been referred for investigation after a determination by board enforcement staff that a probable violation has occurred, and have been reviewed by a supervisor, and regard allegations that if proven would present a risk of harm to the public and would be appropriate for suspension or revocation of the contractor's license or criminal prosecution.

(b) The board shall create a disclaimer that shall accompany the disclosure of a complaint that shall state that the complaint is an allegation. The disclaimer may also contain any other information the board determines would be relevant to a person evaluating the complaint.

(c) A complaint resolved in favor of the contractor shall not be subject to disclosure.

(d) Except as described in subdivision (e), the registrar shall make available to members of the public the date, nature, and disposition of all legal actions.

(e) Disclosure of legal actions shall be limited as follows:

(1) Citations shall be disclosed from the date of issuance and for five years after the date of compliance, counting only the time the contractor's license is active.

(2) Accusations that result in suspension or stayed revocation of the contractor's license shall be disclosed from the date the accusation is filed and for seven years after the accusation has been settled, including the terms and conditions of probation, counting only the time the contractor's license is active.

(3) All revocations that are not stayed shall be disclosed indefinitely from the effective date of the revocation.

(f) Subdivisions (a), (b), and (c) shall become operative on July 1, 2002. Subdivisions (d) and (e) shall become operative on July 1, 2002, or as soon thereafter as administratively feasible, as determined by the registrar, but not later than January 2, 2003.

(Amended, repealed and added by Stats. 2001, Chapter 494 (SB 135), inoperative January 1, 2002, repealed January 1, 2003.)

ARTICLE 7.5. WORKERS' COMPENSATION INSURANCE REPORTS

Reporting Licensee to Registrar

7125. (a) The board shall require as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, that the applicant or licensee have on file at all times a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance. A Certificate of Workers' Compensation Insurance shall be issued and filed, electronically or otherwise, by one or more insurers duly licensed to write workers' compensation insurance in this state. A Certification of Self-Insurance shall be issued and filed by the Director of Industrial Relations. If reciprocity conditions exist, as defined in Section 3600.5 of the Labor Code, the registrar shall require the information deemed necessary to assure compliance with this section.

(b) This section does not apply to an applicant or licensee who has no employees provided that he or she files a statement with the board on a form prescribed by the registrar prior to the issuance, reinstatement, reactivation, or continued maintenance of a license, certifying that he or she does not employ any person in any manner so as to become subject to the workers' compensation laws of California or is not otherwise required to provide for workers' compensation insurance coverage under California law.

(c) No certificate of workers' compensation insurance, certification of self-insurance, or exemption-certificate is required of a holder of a license that has been inactivated on the official records of the board during the period the license is inactive.

(d) The insurer, including the State Compensation Insurance Fund, shall report to the registrar the following information for any policy required under this section: name, license number, policy number, dates that coverage is scheduled to commence and lapse, and cancellation date if applicable.

(Amended by Stats 2002 Chapter 311 § 4 (AB 264)).

Certificate of Worker's Compensation Insurance; Issuance; Filing

7125.1. (a) The registrar shall accept a certificate required by Section 7125 as of the effective date shown on the certificate, if the certificate is received by the registrar within 90 days after that date, and shall reinstate the license to which the certificate pertains, if otherwise eligible, retroactive to the effective date of the certificate.

(b) Notwithstanding subdivision (a), the registrar shall accept the certificate as of the effective date shown on the certificate, even if the certificate is not received by the registrar within 90 days after that date, upon a showing by the licensee, on a form acceptable to the registrar, that the failure to have a certificate on file was due to circumstances beyond the control of the licensee. The registrar shall reinstate the license to which the certificate pertains, if otherwise eligible, retroactive to the effective date of the certificate.

Suspension of License for Failure to Maintain Workers' Compensation Insurance

7125.2. The failure of a licensee to obtain or maintain workers' compensation insurance coverage, if required under this chapter, shall result in the automatic suspension of the license by operation of law in accordance with the provisions of this section, but this suspension shall not affect, alter, or limit the status of the licensee as an employer for purposes of Section 3716 of the Labor Code.

(a) The license suspension imposed by this section is effective upon the earlier of either of the following:

(1) On the date that the relevant workers' compensation insurance coverage lapses.

(2) On the date that workers' compensation coverage is required to be obtained.

(b) A licensee who is subject to suspension under paragraph (1) of subdivision (a) shall be provided a notice by the registrar that includes all of the following:

(1) The reason for the license suspension and the effective date.

(2) A statement informing the licensee that a pending suspension will be posted to the license record for not more than 45 days prior to the posting of any license suspension periods required under this article.

(3) The procedures required to reinstate the license.

(c) Reinstatement may be made at any time following the suspension by showing proof of compliance as specified in Sections 7125 and 7125.1.

(d) In addition, with respect to an unlicensed individual acting in the capacity of a contractor who is not otherwise exempted from the provisions of this chapter, a citation may be issued by the registrar under Section 7028.7 for failure to comply with this article and to maintain workers' compensation insurance. An opportunity for a hearing as specified in Section 7028.10 will be granted if requested within 15 working days after service of the citation.

(Added Stats 1995 ch 467 § 20 (SB 1061). Amended Stats 2002 ch 311 § 5 (AB 264).)

Periods of licensure

7125.3. A contractor shall be considered duly licensed during all periods in which the registrar is required to accept the certificate prescribed by Section 7125, provided the licensee has otherwise complied with the provisions of this chapter.

(Added Stats 2002 Chapter 311 § 6 (AB 264).)

Causes for disciplinary action

7125.4. The filing of statement or exemption certificate prescribed by this article that is false, or the employment of a person subject to coverage under the workers' compensation laws after the filing of an exemption certificate without first filing a Certificate of Workers' Compensation Insurance or Certification of Self-Insurance in accordance with the provisions of this article, or the employment of a person subject to coverage under the workers' compensation laws without maintaining coverage for that person, constitutes cause for disciplinary action.

(Added Stats 2002 Chapter 311 § 7 (AB 264).)

Violation; Penalty

7126. Any licensee or agent or officer thereof, who violates, or omits to comply with, any of the provisions of this article is guilty of a misdemeanor.

See Labor Code Section 3899, Building Permits; Requirement for Verification of Workers Compensation in Appendix.

See also Health and Safety Code Section 109825, Declaration of Worker's Compensation Required on Building Permits, in Appendix.

ARTICLE 8. REVENUE

Appropriations

7135. (a) The fees and civil penalties received under this chapter shall be deposited in the Contractors' License Fund. All moneys in the fund are hereby appropriated for the purposes of this chapter.

(b) It is the intent of the Legislature that the board shall use moneys appropriated from the fund to improve its administrative and investigative oversight activities and capacity.

Allocations for Enforcement of Unlicensed Activity

7135.1. It is the intent of the Legislature that, each fiscal year the board shall designate, if appropriated in the Budget Act and to the extent that it does not conflict with the control language of the Budget Act, no less than 20 percent of the annual amount collected as a result of the fees increased by statutes enacted during the 1993 portion of the 1993-94 Regular Session to be used to enforce the provision of this chapter relative to unlicensed activity.

Board's Share of Department's Administrative Cost

7136. The director shall designate a sum not to exceed 10 percent of the total income of the Contractors State License Board for each fiscal year to be transferred to the Consumer Affairs Fund as the board's share of the cost of administration of the department.

Fee Schedule

7137. The board shall set fees by regulation. These fees shall not exceed the following schedule:

(a) The application fee for an original license in a single classification shall not be more than three hundred dollars (\$300).

The application fee for each additional classification applied for in connection with an original license shall not be more than seventy-five dollars (\$75).

The application fee for each additional classification pursuant to Section 7059 shall not be more than seventy-five dollars (\$75).

The application fee to replace a responsible managing officer or employee pursuant to Section 7068.2 shall not be more than seventy-five dollars (\$75).

(b) The fee for rescheduling an examination for an applicant who has applied for an original license, additional classification, a change of responsible managing officer or responsible managing employee, or for an asbestos certification or hazardous substance removal certification, shall not be more than sixty dollars (\$60).

(c) The fee for scheduling or rescheduling an examination for a licensee who is required to take the examination as a condition of probation shall not be more than sixty dollars (\$60).

(d) The initial license fee for an active or inactive license shall not be more than one hundred eighty dollars (\$180).

(e) The renewal fee for an active license shall not be more than three hundred sixty dollars (\$360).

The renewal fee for an inactive license shall not be more than one hundred eighty dollars (\$180).

(f) The delinquency fee is an amount equal to 50 percent of the renewal fee, if the license is renewed more than 30 days after its expiration.

(g) The registration fee for a home improvement salesperson shall not be more than seventy-five dollars (\$75).

(h) The renewal fee for a home improvement salesperson registration shall not be more than seventy-five dollars (\$75).

(i) The application fee for an asbestos certification examination shall not be more than seventy-five dollars (\$75).

(j) The application fee for a hazardous substance removal or remedial action certification examination shall not be more than seventy-five dollars (\$75).

(Amended by Stats 1993 Chapter 1188 § 2 (SB 148); Stats 1999 Chapter 982 § 3.7 (AB 1678); Stats 2002 Chapter 744 § 8 (SB 1953).)

Transfer of Funds for Use of Uniform Construction Cost Accounting Commission; Recommendation; Reimbursement

7137.5. The sum of ten thousand dollars (\$10,000) shall be transferred from the Contractors' License Fund to the Controller for the exclusive use of the California Uniform Construction Cost Accounting Commission.

The commission shall prepare a recommendation to the Legislature for a local public agency source to fund the commission beginning July 1, 1991, which will provide revenue supported by the contract activities represented by the commission's authority.

Upon adoption of this funding program, the commission shall reimburse the Contractors' License Fund in the amount of ten thousand dollars (\$10,000).

Fees Not Refundable

7138. An application, reapplication, or rescheduling fee paid in connection with an application for an original license, an additional classification, or replacement of a responsible managing officer or employee, as provided in subdivisions (a) and (b) of Section 7137, shall accrete to the Contractors' License Fund as an earned fee. This fee shall not be refunded, notwithstanding any other provision of law, when the application is filed.

See Unemployment Insurance Code Section 10501, Job Training Program: Waiver of Fees, in Appendix.

Reserve Fund Level

7138.1. Notwithstanding Section 7137, the board shall fix fees to be collected pursuant to that section in order to generate revenues sufficient to maintain the board's reserve fund at a level not to exceed approximately six months of annual authorized board expenditures.

(Amended Stats 2002, Chapter 744 § 9 (SB 1953).)

ARTICLE 8.5. THE CONSTRUCTION MANAGEMENT EDUCATION SPONSORSHIP ACT OF 1991

Title of Article

7139. This article shall be known as the Construction Management Education Sponsorship Act of 1991.

Need for Construction Management Education Programs

7139.1. The Legislature hereby finds and declares all of the following:

(a) There is a demand and increasing need for construction management education programs and resources

within the postsecondary education system that prepare graduates for the management of construction operations and companies regulated by the Contractors' State License Law and enforced by the Contractors State License Board.

(b) Although construction management programs do exist within the state university system, these programs are woefully underfunded and insufficiently funded to provide training on state-of-the-art management information systems for either graduates or extension programs for continuing education of licensed contractors. Construction industry associations have provided some assistance through direct grants and scholarships, but the industrywide service of these programs and the need for additional assistance mandates broad based industrywide support.

(c) It is the intent of the Legislature that by enabling contractors to designate a portion of their licensure fee and providing a format for contractors to contribute funds to construction management education, this article will receive broad based industry support. In addition, this article allows the contractor to demonstrate the importance of construction management education. This assistance will enable greater development of construction management curricula and will improve the overall quality of construction by providing construction management training to California licensed contractors and their current and future management personnel.

Construction Management Education Account; Funding

7139.2. (a) There is hereby created the Construction Management Education Account (CMEA) as a separate account in the Contractors' License Fund for the purposes of construction management education. Funds in the account shall be available for the purposes of this article upon appropriation by the Legislature.

(b) The Contractors State License Board shall allow a contractor to contribute twenty-five dollars (\$25) to the Construction Management Education Account at the time of the contractor license fee payment. The license fee form shall clearly display this alternative on its face and shall clearly inform the licensee that this provision is a contribution to the Construction Management Education Account and is in addition to the fees.

(c) The board may accept grants from federal, state, or local public agencies, or from private foundations or individuals, in order to assist it in carrying out its duties, functions, and powers under this article. Grant moneys shall be deposited into the Construction Management Education Account.

Grants; Award of

7139.3. (a) The board may award grants to qualified public postsecondary educational institutions for the support of courses of study in construction management.

(b) Any organization of contractors, or organization of contractor organizations, incorporated under Division 2 (commencing with Section 5000) of the Corporations Code may request the board to award grants pursuant to

subdivision (a) directly to qualified public postsecondary educational institutions of its choice. However, the total amount of money that may be awarded to one public postsecondary educational institution pursuant to subdivision (a) may not exceed an amount equal to 25 percent of the total funds available under this article.

(c) The board shall establish an advisory committee to recommend grant awards. The advisory committee shall be known as the Construction Management Education Account Advisory Committee and shall consist of 11 members, with at least one representative from each of the following : Associated General Contractors of California, Associated Builders and Contractors, California Building Industry Association, National Electrical Contractors Association, Plumbing-Heating-Cooling Contractor's Association, Southern California Contractor's Association, Associated General Contractors of San Diego, Engineering and Utility Contractors Association, Engineering Contractors Association, California Sheet Metal and Air Conditioning Contractor's Association, and one member representing the California State University and University of California construction management programs accredited by the American Council for Construction Education. Advisory committee member terms shall be for three years and the representatives shall be appointed by each identified group. Members of the advisory committee shall not receive per diem or reimbursement for traveling and other expenses pursuant to Section 103 .

(d) The mission of the Construction Management Education Account Advisory Committee is to maintain, and increase the quality and availability of, education programs for the construction industry. The primary focus is to provide financial resources not now available to accredited construction management programs in California colleges and universities to maintain and upgrade facilities and provide greater access by the industry to modern construction standards and management practices. The advisory committee shall do all of the following:

- (1) Confirm the qualifications of programs applying for grants.
- (2) Award less than full grants when the account has insufficient funds to award full grants to all qualifying programs.
- (3) Receive and review year-end reports of use and impact of funds.
- (4) Affirm applications for American Council for Construction Education accreditation and, when funds are available, award grants to complete the accreditation process.
- (5) Promote close ties between feeder junior colleges and four-year construction management programs.
- (6) Support development of new educational programs with specific emphasis on outreach to the construction industry at large.

Qualified Programs

7139.4. Qualified public postsecondary educational institutions shall provide postsecondary construction management programs at the baccalaureate or higher level

that either award or provide one of the following:

- (a) A bachelor of science construction management degree accredited by the American Council for Construction Education.
- (b) A degree with an American Council for Construction Education accredited option, including, but not limited to, engineering technology and industrial technology.
- (c) A bachelor of science or higher degree program documenting placement of more than 50 percent of their graduates with California licensed contractors. The placement of a person who holds a master or doctorate degree in the faculty of a construction program shall be counted as though placed with a California licensed contractor.
- (d) The development of a construction management curriculum to meet the American Council for Construction Education criteria.

Grant Amounts

7139.5. Grants shall be made pursuant to this article to public postsecondary educational institutions that meet the qualifications specified in Section 7139.4 in the following amounts:

- (a) Three thousand dollars (\$3,000) per graduate during the past academic year for institutions qualifying under subdivision (a) of Section 7139.4.
- (b) Three thousand dollars (\$3,000) per graduate during the past academic year for institutions qualifying under subdivision (b) of Section 7139.4.
- (c) Three thousand dollars (\$3,000) per graduate placed with California licensed contractors during the past academic year for institutions qualifying under subdivision (c) of Section 7139.4. These funds shall be used for the purpose of becoming accredited by the American Council for Construction Education and shall be available for up to three years. The board may continue to provide this grant to an institution that in its judgment is meeting the intent of this act and is continuing its development towards accreditation.
- (d) Institutions qualifying under subdivision (d) of Section 7139.4 may receive a grant in an amount up to twenty-five thousand dollars (\$25,000) per year for up to two years. Thereafter, these institutions may receive grants based upon the criteria described in subdivisions (a) to (c), inclusive. The board may continue to award a grant to an institution that in its judgment is meeting the intent of this article and is continuing its development towards accreditation.

Grants; Use of Funds

7139.6. (a) The grants issued pursuant to Sections 7139.3 and 7139.5 may be used for all of the following:

- (1) Instructional materials and support, equipment, curriculum development, and delivery.
- (2) Support and development of outreach, continuing education, and cooperative education or internship programs.

(3) Administrative and clerical support positions.

(4) Faculty recruitment and development, to include support for postgraduate work leading to advanced degrees, visiting lecturer compensation and expenses, teaching assistant positions, and faculty positions.

(b) Grant moneys may also be used to support general classroom and laboratory operating expenses and related administrative supplies, including, but not limited to, reference materials, testing equipment, and equipment maintenance. The list of support items in this subdivision and subdivision (a) are intended to be descriptive rather than limiting. "Support" does not include faculty salary supplements.

Report to Legislature

7139.7. The board shall report to the Legislature annually on the condition of the grant program and shall include in the report the names of the public postsecondary educational institutions involved, the amount of funds granted to each of those educational institutions, the purposes for which the funds were granted to each of those recipients, the number of students involved, the number of placements made to the construction industry for the previous academic year, and any other information the board considers relevant to the program.

Report to Board

7139.8. The president of each public postsecondary educational institution receiving a grant under this article shall submit, with its respective request for a grant each year following the initial year for which grants are issued, a report to the board delineating the amount of the past grant awarded from the Construction Management Education Account to that institution and the utilization of those funds. The report shall include, but not be limited to, the following:

- (a) The number of graduates placed with the California licensed contractors during the previous academic year.
- (b) The expected enrollment in construction management courses in the upcoming academic year.
- (c) Continuing education and extension courses offered during the previous academic year and their enrollments.

Allocation of Funds for Administration

7139.9. The board may allocate up to fifteen thousand dollars (\$15,000) per year from the Construction Management Education Account for the administration of this article.

Limitation on Funding

7139.10. It is the intent of the Legislature that state funding for the grants authorized to be awarded under this section be provided only from the Contractors' License Fund to the extent that funds are available in that fund and that no other state funding be provided for those grants.

ARTICLE 9. RENEWAL OF LICENSES

Expiration of Licenses

7140. All licenses issued under the provisions of this chapter shall expire two years from the last day of the month in which the license is issued, or two years from the date on which the renewed license last expired.

To renew a license which has not expired, the licensee shall, before the time at which the license would otherwise expire, apply for renewal on a form prescribed by the registrar and pay the renewal fee prescribed by this chapter. Renewal of an unexpired license shall continue the license in effect for the two-year period following the expiration date of the license, when it shall expire if it is not again renewed.

Renewal After Expiration

7141. Except as otherwise provided in this chapter, a license that has expired may be renewed at any time within three years after its expiration by filing an application for renewal on a form prescribed by the registrar, and payment of the appropriate renewal fee. Renewal under this section shall be effective on the date an acceptable renewal application is filed with the board. The licensee shall be considered unlicensed and there will be a break in the licensing time between the expiration date and the date the renewal becomes effective. If the license is renewed after the expiration date, the licensee shall also pay the delinquency fee prescribed by this chapter. If so renewed, the license shall continue in effect through the date provided in Section 7140 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

If a license is not renewed within three years, the licensee shall make application for a license pursuant to Section 7066.

Retroactive Renewal

7141.5. The registrar may grant the retroactive renewal of a license if the licensee requests the retroactive renewal in a petition to the registrar, files an application for renewal on a form prescribed by the registrar, and pays the appropriate renewal fee and delinquency fee prescribed by this chapter. This section shall only apply for a period not to exceed 90 days from the due date and only upon a showing by the contractor that the failure to renew was due to circumstances beyond the control of the licensee.

Renewal of Suspended License

7143. A license which is suspended for any reason which constitutes a basis for suspension under this chapter, is subject to expiration and shall not be renewed as active. The license may only be renewed as inactive, but such renewal does not entitle the licensee, while the license remains suspended, and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

New License Requirements

7143.5. A person who, by reason of the provisions of Section 7141, is not entitled to renew his license, may apply for and obtain a new license only if he pays all of the fees and meets all of the qualifications and requirements set forth in this chapter for obtaining an original license.

No Renewal of Revoked License

7144. A revoked license shall be considered as having expired as of the date of revocation and shall not be renewed. To reinstate a revoked license a licensee may apply for reinstatement of the license only if he pays all of the fees and meets all of the qualifications and requirements set forth in this chapter for obtaining an original license.

Failure to Complete Renewal Form

7145. The registrar may refuse to renew a license for the failure or refusal by the licensee to complete the renewal application prescribed by the registrar. If a licensee fails to return an application for renewal which was rejected for insufficiency or incompleteness within 90 days from the original date of rejection, the application and fee shall be deemed abandoned. Any application abandoned may not be reinstated. However, the applicant may file another application accompanied by the required fee.

The registrar may review and accept the petition of a licensee who disputes the invalidation of his or her application for renewal upon a showing of good cause. This petition shall be received within 90 days from the date the renewal application is deemed abandoned.

Failure to Resolve Outstanding Liabilities

7145.5. (a) The registrar may refuse to issue, reinstate, reactivate, or renew a license or may suspend a license for the failure of a licensee to resolve all outstanding final liabilities, which include taxes, additions to tax, penalties, interest and any fees that may be assessed by the board, the Department of Industrial Relations, the Employment Development Department, or the Franchise Tax Board. The refusal or suspension provided by this section shall be applicable only if the registrar has mailed a notice preliminary to the refusal or suspension which indicates that the license will be refused or suspended by a date certain. This preliminary notice shall be mailed to the licensee at least 60 days before the date certain.

(b) In the case of outstanding final liabilities assessed by the Franchise Tax Board, this section shall be operative within 60 days after the Contractors State License Board has provided the Franchise Tax Board with the information required under Section 30, relating to licensing information which includes the federal employee identification number or social security number.

(c) All versions of the application for contractor's licenses shall include, as part of the application, an authorization by the applicant, in the form and manner mutually agreeable to the Franchise Tax Board and the board, for the Franchise Tax Board to disclose the tax information that is required for the registrar to administer this section. The Franchise Tax Board may from time to time audit these authorizations.

ARTICLE 10. HOME IMPROVEMENT BUSINESS

"Person" Defined

7150. "Person" as used in this article is limited to natural persons, notwithstanding the definition of person in Section 7025.

Home Improvement Contractor

7150.1. A home improvement contractor, including a swimming pool contractor, is a contractor as defined and licensed under this chapter who is engaged in the business of home improvement either full time or part time. A home improvement contractor shall satisfy all requirements imposed by this article.

(Amended by Stats. 1991, Chapter 1160 (AB 2190); Stats. 1997, Chapter 888 (AB 1213).)

Certification for Home Improvement Contractors

(Operative until January 1, 2004)

7150.2. (a) On or before January 1, 1999, the board shall establish a certification program for home improvement contractors. The board shall certify as home improvement contractors individuals, partnerships, corporations, or other combinations or organizations that perform or provide home improvement goods or services, as defined in Section 7151, and that meet the requirements set forth in Section 7150.3.

(b) The board shall publish a booklet containing information relative to the business of a home improvement contractor that shall be distributed to contractors upon request. At the board's discretion, it may charge an amount not to exceed the cost of publication.

(c) On and after July 1, 2000, a contractor may not engage in the business of home improvement or provide home improvement goods or services, as defined in Section 7151, unless the contractor is certified as a home improvement contractor.

(d) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

(Added by Stats. 1997, Chapter 888 (AB 1213), operative until January 1, 2004.)

Qualification for Home Improvement Contractor

(Operative until January 1, 2004)

7150.3. (a) In order to qualify for certification as a home improvement contractor, an applicant shall do all of the following:

- (1) Apply to the board on a form prescribed by the registrar.
- (2) Hold a current and valid contractor's license.
- (3) Take and pass an open book examination on the business and contracting skills and laws related to home improvement contracting. In the case of a partnership, corporation, or other entity, in the situation in which the contractor's license has been obtained by appearance of a qualifying individual, that qualifying individual shall take and pass the examination.

(b) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

(Added by Stats. 1997, Chapter 888 (AB 1213), operative until January 1, 2004.)

“Home Improvement,” “Home Improvement Goods or Services”; Definitions

7151. “Home improvement” means the repairing, remodeling, altering, converting, or modernizing of, or adding to, residential property and shall include, but not be limited to, the construction, erection, replacement, or improvement of driveways, swimming pools, including spas and hot tubs, terraces, patios, awnings, storm windows, landscaping, fences, porches, garages, fallout shelters, basements, and other improvements of the structures or land which is adjacent to a dwelling house. “Home improvement” shall also mean the installation of home improvement goods or the furnishing of home improvement services.

For purposes of this chapter, “home improvement goods or services” means goods and services, as defined in Section 1689.5 of the Civil Code, which are bought in connection with the improvement of real property. Such home improvement goods and services include, but are not limited to, carpeting, texture coating, fencing, air conditioning or heating equipment, and termite extermination. Home improvement goods include goods which are to be so affixed to real property as to become a part of real property whether or not severable therefrom.

See Civil Code Sections 1689.5, Home Solicitation Contract; 1689.6, Cancellation of Home Solicitation Contract; 1689.7, Form of Notice of Cancellation; 1689.8 Contract which provides for Lien; 1689.9, Exemptions; 1689.10, After Cancellation, Seller to Return Downpayment; 1689.11, Buyer to Return Goods; 1689.12, Invalidity of Waiver of Statute; 1689.13, Notice Not Required for Emergency Situations; 1689.14, Void Contracts, in Appendix.

“Home Improvement Contract” Defined

7151.2. “Home improvement contract” means an agreement, whether oral or written, or contained in one or more documents, between a contractor and an owner or between a contractor and a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, if the work is to be performed in, to, or upon the residence or dwelling unit of the tenant, for the performance of a home improvement as defined in Section 7151, and includes all labor, services, and materials to be furnished and performed thereunder. “Home improvement contract” also means an agreement, whether oral or written, or contained in one or more documents, between a salesperson, whether or not he or she is a home improvement salesperson and (a) an owner or (b) a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, which provides for the sale, installation, or furnishing of home improvement goods or services.

(Amended by Stats. 1991, Chapter 1160 (AB 2190).)

See Civil Code Sections 1804.3, Security Interest in Goods Paid For Not Sold; Security Interest in Real Property for Sale of Unattached Goods; 1805.6, Undelivered Goods; 1810.10, Finance Charge, in Appendix.

Home Improvement Salesperson

7152. (a) “Home improvement salesperson” is a person employed by a Home Improvement contractor licensed under this chapter to solicit, sell, negotiate, or execute contracts for home improvements, for the sale, installation or furnishing of home improvement goods or services, or of swimming pools, spas, or hot tubs.

(b) The following shall not be required to be registered as home improvement salespersons:

- (1) An officer of record of a corporation licensed pursuant to this chapter.
- (2) A qualifying person, as defined in Section 7068.
- (3) A salesperson whose sales are all made pursuant to negotiations between the parties if the negotiations are initiated by the prospective buyer at or with a general merchandise retail establishment that operates from a fixed location where goods or services are offered for sale.
- (4) A person who contacts the prospective buyer for the exclusive purpose of scheduling appointments for a registered home improvement salesperson.
- (5) A bona fide service repairperson who is in the employ of a licensed contractor and whose repair or service call is limited to the service, repair, or emergency repair initially requested by the buyer of the service.

Registration Required

7153. (a) It is a misdemeanor for any person to engage in the occupation of salesperson for one or more home improvement contractors within this state without having a registration issued by the registrar for each of the home improvement contractors by whom he or she is employed as a home improvement salesperson. If, upon investigation, the registrar has probable cause to believe that a salesperson is in violation of this section, the registrar may issue a citation pursuant to Section 7028.7.

It is a misdemeanor for any person to engage in the occupation of salesperson of home improvement goods or services within this state without having a registration issued by the registrar.

(b) Any security interest taken by a contractor, to secure any payment for the performance of any act or conduct described in Section 7151 that occurs on or after January 1, 1995, is unenforceable if the person soliciting the act or contract was not a duly registered salesperson or was not exempt from registration pursuant to Section 7152 at the time the homeowner signs the home improvement contract solicited by the salesperson.

(Amended by Stats. 1994, Chapter 888 (AB 3269); Stats. 2001, Chapter 728 (SB 724).)

Application for Registration; Fingerprints

7153.1. (a) The home improvement salesperson shall submit to the registrar an application in writing containing the statement that he or she desires the issuance of a registration under the terms of this article.

The application shall be made on a form prescribed by the registrar and shall be accompanied by the fee fixed by this chapter.

(b) The registrar may refuse to register the applicant under the grounds specified in Section 480.

(c) As part of an application for a home improvement salesperson, the board shall require an applicant to furnish a full set of fingerprints for purposes of conducting criminal history record checks. Fingerprints furnished pursuant to this subdivision shall be submitted in an electronic format where readily available. Requests for alternative methods of furnishing fingerprints are subject to the approval of the registrar. The board shall use the fingerprints furnished by an applicant to obtain criminal history information on the applicant from the Department of Justice and the United States Federal Bureau of Investigation, including any subsequent arrest information available. This subdivision shall become operative on January 1, 2004.

(Amended by Stats 2002, Chapter ch 744 § 10 (SB 1953).)

Expiration of Registration

7153.2. All registrations issued under the provisions of this article shall expire on a date established pursuant to Section 152.6.

Renewal of Registration

7153.3. (a) To renew a registration, the registrant shall before the time at which the registration would otherwise expire, apply for renewal on a form prescribed by the registrar and pay a renewal fee prescribed by this chapter.

(b) An application for renewal of registration is delinquent if the application is not postmarked by the date on which the registration would otherwise expire. A registration may, however, still be renewed at any time within three years after its expiration upon the filing of an application for renewal on a form prescribed by the registrar and the payment of the renewal fee prescribed by this chapter and a delinquent renewal penalty in the amount of twenty-five dollars (\$ 25). If a registration is not renewed within three years, the person shall make application for registration pursuant to Section 7153.1.

(c) The registrar may refuse to renew a registration for failure by the registrant to complete the application for renewal of registration. If a registrant fails to return the application rejected for insufficiency or incompleteness within 90 days from the original date of rejection, the application and fee shall be deemed abandoned. Any application abandoned may not be reinstated. However, the person may file a new application for registration pursuant to Section 7153.1. The registrar may review and accept the petition of a person who disputes the abandonment of his or her renewal application upon a showing of

good cause. This petition shall be received within 90 days of the date the application for renewal is deemed abandoned.

Penalty for Employment of Nonregistrant

7154. A home improvement contractor who employs a person to sell home improvement contracts while such person is not registered by the registrar as a home improvement salesman as provided in this article, is subject to disciplinary action by the registrar.

Disciplinary Action Provided

7155. Violation of any provision of this chapter by a home improvement salesman constitutes cause for disciplinary action. The registrar may suspend or revoke the registration of the home improvement salesman if he is found to be in violation. The disciplinary proceedings shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Violation; Liability of Contractor

7155.5 Violations of any provisions of this chapter by a home improvement salesperson, likewise constitutes a cause for disciplinary action against the contractor, whether or not he or she had knowledge of or participated in the act or omission constituting violations of this chapter.

Salesperson Penalty

7156. It shall be a misdemeanor and a cause for disciplinary action to commit any of the following acts:

(a) For any salesperson to fail to account for or to remit to his or her employing contractor any payment received in connection with any home improvement transaction or any other transaction involving a work of improvement.

(b) For any person to use a contract form in connection with any home improvement transaction or any other transaction involving a work of improvement if the form fails to disclose the name of the contractor principal by whom he or she is employed.

Kickback Penalty

7157. (a) Except as otherwise provided in subdivision (b), as a part of or in connection with the inducement to enter into any home improvement contract or other contract, which may be performed by a contractor, no person may promise or offer to pay, credit, or allow to any owner, compensation or reward for the procurement or placing of home improvement business with others.

(b) A contractor or his or her agent or salesperson may give tangible items to prospective customers for advertising or sales promotion purposes where the gift is not conditioned upon obtaining a contract for home improvement work if the gift does not exceed a value of five dollars (\$ 5) and only one such gift is given in connection with any one transaction.

(c) No salesperson or contractor's agent may accept any compensation of any kind, for or on account of a home improvement transaction, or any other transaction involv-

ing a work of improvement, from any person other than the contractor whom he or she represents with respect to the transaction, nor shall the salesperson or agent make any payment to any person other than his or her employer on account of the sales transaction.

(d) No contractor shall pay, credit, or allow any consideration or compensation of any kind to any other contractor or salesperson other than a licensee for or on account of the performance of any work of improvement or services, including, but not limited to, home improvement work or services, except: (1) where the person to or from whom the consideration is to be paid is not subject to or is exempted from the licensing requirements of this chapter, or (2) where the transaction is not subject to the requirements of this chapter.

As used in this section “owners” shall also mean “tenant.”

Commission of any act prohibited by this section is a misdemeanor and constitutes a cause for disciplinary action.

False Completion Certificate

7158. (a) Any person who shall accept or receive a completion certificate or other evidence that performance of a contract for a work of improvement, including but not limited to a home improvement, is complete or satisfactorily concluded, with knowledge that the document is false and that the performance is not substantially completed, and who shall utter, offer, or use the document in connection with the making or accepting of any assignment or negotiation of the right to receive any payment from the owner, under or in connection with a contract, or for the purpose of obtaining or granting any credit or loan on the security of the right to receive any payment shall be guilty of a misdemeanor and subject to a fine of not less than five hundred dollars (\$ 500) nor more than five thousand dollars (\$ 5,000), or to imprisonment in the county jail for a term of not less than one month nor more than one year, or both.

(b) Any person who violates this section as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person’s ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by subdivision (a), the court may impose a fine of not less than five hundred dollars (\$ 500) nor more than twenty-five thousand dollars (\$25,000), based upon the defendant’s ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

See Penal Code Section 532e, Rebates, in Appendix.

Home Improvement Contract Form

7159. Contract requirements; effect of noncompliance; violations

This section applies only to home improvement contracts, as defined in Section 7151.2, between a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction and who contracts with an owner or tenant for work upon a residential building or structure, or upon land adjacent thereto, for proposed repairing, remodeling, altering, converting, modernizing, or adding to the residential building or structure or land adjacent thereto, and where the aggregate contract price specified in one or more improvement contracts, including all labor, services, and materials to be furnished by the contractor, exceeds five hundred dollars (\$500).

Every home improvement contract and every contract, the primary purpose of which is the construction of a swimming pool, is subject to this section. Every contract and any changes in the contract subject to this section shall be evidenced by a writing and shall be signed by all the parties to the contract. The writing shall contain all of the following:

(a) The name, address, and license number of the contractor, and the name and registration number of any salesperson who solicited or negotiated the contract.

(b) The approximate dates when the work will begin and on which all construction is to be completed.

(c) A plan and scale drawing showing the shape, size, dimensions, and construction and equipment specifications for a swimming pool and for other home improvements, a description of the work to be done and description of the materials to be used and the equipment to be used or installed, and the agreed consideration for the work.

(d) If the payment schedule contained in the contract provides for a downpayment to be paid to the contractor by the owner or the tenant before the commencement of work, the downpayment may not exceed two hundred dollars (\$200) or 2 percent of the contract price for swimming pools, or one thousand dollars (\$1,000) or 10 percent of the contract price for other home improvements, excluding finance charges, whichever is less.

(e) A schedule of payments showing the amount of each payment as a sum in dollars and cents. In no event may the payment schedule provide for the contractor to receive, nor may the contractor actually receive, payments in excess of 100 percent of the value of the work performed on the project at any time, excluding finance charges, except that the contractor may receive an initial downpayment authorized by subdivision (d). With respect to a swimming pool contract, the final payment may be made at the completion of the final plastering phase of construction, provided that any installation or construction of equipment, decking, or fencing required by the contract is also completed. A failure by the contractor without lawful excuse to substantially commence work

within 20 days of the approximate date specified in the contract when work will begin shall postpone the next succeeding payment to the contractor for that period of time equivalent to the time between when substantial commencement was to have occurred and when it did occur. The schedule of payments shall be stated in dollars and cents, and shall be specifically referenced to the amount of work or services to be performed and to any materials and equipment to be supplied. With respect to a contract that provides for a schedule of monthly payments to be made by the owner or tenant and for a schedule of payments to be disbursed to the contractor by a person or entity to whom the contractor intends to assign the right to receive the owner's or tenant's monthly payments, the payments referred to in this subdivision mean the payments to be disbursed by the assignee and not those payments to be made by the owner or tenant.

(f) A statement that, upon satisfactory payment being made for any portion of the work performed, the contractor shall, prior to any further payment being made, furnish to the person contracting for the home improvement or swimming pool a full and unconditional release from any claim or mechanic's lien pursuant to Section 3114 of the Civil Code for that portion of the work for which payment has been made.

(g) The requirements set forth in subdivisions (d), (e), and (f) do not apply when the contract provides for the contractor to furnish a performance and payment bond, lien and completion bond, bond equivalent, or joint control approved by the registrar covering full performance and completion of the contract and the bonds or joint control is or are furnished by the contractor, or when the parties agree for full payment to be made upon or for a schedule of payments to commence after satisfactory completion of the project. The contract shall contain, in close proximity to the signatures of the owner and contractor, a notice in at least 10-point type stating that the owner or tenant has the right to require the contractor to have a performance and payment bond.

(h) No extra or change-order work may be required to be performed without prior written authorization of the person contracting for the construction of the home improvement or swimming pool. No change-order is enforceable against the person contracting for home improvement work or swimming pool construction unless it clearly sets forth the scope of work encompassed by the change-order and the price to be charged for the changes. Any change-order forms for changes or extra work shall be incorporated in, and become a part of, the contract. Failure to comply with the requirements of this subdivision does not preclude the recovery of compensation for work performed based upon quasi-contract, quantum meruit, restitution, or other similar legal or equitable remedies designed to prevent unjust enrichment.

(i) If the contract provides for a payment of a salesperson's commission out of the contract price, that payment shall be made on a pro rata basis in proportion to the schedule of payments made to the contractor by the disbursing party in accordance with subdivision (e).

(j) The language of the notice required pursuant to Section 7018.5.

(k) What constitutes substantial commencement of work pursuant to the contract.

(l) A notice that failure by the contractor without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin is a violation of the Contractors' State License Law.

(m) If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.

A failure by the contractor without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin is a violation of this section.

This section does not prohibit the parties to a home improvement contract from agreeing to a contract or account subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

The writing may also contain other matters agreed to by the parties to the contract.

The writing shall be legible and shall be in a form that clearly describes any other document that is to be incorporated into the contract. Before any work is done, the owner shall be furnished a copy of the written agreement, signed by the contractor.

For purposes of this section, the board shall, by regulation, determine what constitutes "without lawful excuse."

The provisions of this section are not exclusive and do not relieve the contractor or any contract subject to it from compliance with all other applicable provisions of law.

A violation of this section by a licensee, or a person subject to be licensed, under this chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(n) Any person who violates this section as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars (\$500) nor more than twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

(o)(1) An indictment or information against a person who is not licensed, but who is required to be licensed under this chapter, shall be brought, or a criminal complaint filed, for a violation of this section within four years from the date the buyer signs the contract.

(2) An indictment or information against a person who is licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section within one year from the date the buyer signs the contract.

(3) The limitations on actions in this subdivision shall not apply to any administrative action filed against a licensed contractor.

Notice in Sale of Home Improvement Goods or Services

7159.1. In any contract for the sale of home improvement goods or services offered by door-to-door sale that contains or is secured by a lien on real property, the contract shall be accompanied by the following notice in 18-point boldfaced type:

“WARNING TO BUYER: IF YOU SIGN THE CONTRACT WHICH ACCOMPANIES THIS NOTICE, YOU WILL BE PUTTING UP YOUR HOME AS SECURITY. THIS MEANS THAT YOUR HOME COULD BE SOLD WITHOUT YOUR PERMISSION AND WITHOUT ANY COURT ACTION IF YOU MISS ANY PAYMENT REQUIRED BY THIS CONTRACT.”

This notice shall be written in the same language as the rest of the contract. It shall be on a separate piece of paper from the rest of the contract and shall be signed and dated by the buyer. The home improvement contractor or home improvement salesperson shall deliver to the buyer at the time of the buyer’s signing and dating of the notice a legible copy of the signed and dated notice. A security interest created in any contract described in this section that does not provide the notice as required by this section shall be void and unenforceable.

This section shall not apply to any of the following:

(a) Any contract that is subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

(b) A mechanic’s lien established pursuant to Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code.

(c) Any contract that is subject to subdivision (a) of Section 7159.2.

(Added by Stats. 1998, Chapter 571 (AB 2301).)

Security Interest for Home Improvement Goods or Services

7159.2. Contracts for sale of home improvement goods or services; real property lien to secure small contracts; action for damages; attorney’s fees and costs

(a) No home improvement goods or services contract of a value of five thousand dollars (\$5,000) or less shall provide for a security interest in real property, except for a mechanic’s lien or other interest in property that arises by

operation of law. Any lien in violation of this subdivision is void and unenforceable.

(b) When the proceeds of a loan secured by a mortgage on real property are used to fund goods or services pursuant to a home improvement goods or services contract of more than five thousand dollars (\$5,000), the person or entity making the loan shall only pay a contractor under the home improvement goods or services contract from the proceeds of the loan by either of the following methods:

(1) By an instrument payable to the borrower or jointly to the borrower and the contractor.

(2) At the election of the borrower, through a third-party escrow agent pursuant to the terms of a written agreement signed by the borrower, the person or entity making the loan, and the contractor prior to the disbursement.

(c) Any person or entity who violates any provision of this section shall be liable for actual damages suffered by the borrower for damages that proximately result from the violation.

(d) Any person or entity who intentionally or as a pattern or practice violates any provision of this section shall be additionally liable for three times the contract price for the home improvement.

(e) Any person who is a senior citizen or disabled person, as defined in subdivisions (f) and (g) of Section 1761 of the Civil Code, as part of any action for a violation of this section, may seek and be awarded, in addition to the remedies provided in this section, up to five thousand dollars (\$5,000) as provided in subdivision (b) of Section 1780 of the Civil Code.

(f) The court shall award court costs and attorney’s fees to a prevailing plaintiff in an action brought pursuant to this section. Reasonable attorney’s fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff’s prosecution of the action was not in good faith.

(Added by Stats. 1998, Chapter 571 (AB 2301); Amended by Stats. 1999, Chapter 512 (SB 187).)

Home Improvement Contracts and Estimates; Attached Statements

Operative three months after adoption of specified regulations; see subdivision (b).

7159.3. (a) A home improvement contract and an estimate for home improvement work shall be accompanied by and include all of the following:

(1) A statement prepared by the board through regulation that emphasizes the value of commercial general liability insurance and encourages the owner or tenant to verify the contractor’s insurance coverage and status.

(2) A check box indicating whether or not the contractor carries commercial general liability insurance, and if that is the case, the name and the telephone number of the insurer.

(3) A checklist prepared by the board through regulation setting forth the items that an owner contracting for home improvement should consider when reviewing a proposed home improvement contract.

(b) This section shall become operative three months after the board adopts the regulations referenced in paragraph (1) of subdivision (a).

(Added by Stats. 2000, Chapter 1005 (SB 2029),)

False Representation; Penalty

7160. Any person who is induced to contract for a work of improvement, including but not limited to a home improvement, in reliance on false or fraudulent representations or false statements knowingly made, may sue and recover from such contractor or solicitor a penalty of five hundred dollars (\$500), plus reasonable attorney's fees, in addition to any damages sustained by him by reason of such statements or representations made by the contractor or solicitor.

Misrepresentation; False Advertising

7161. It is a misdemeanor for any person to engage in any of the following acts, the commission of which shall be cause for disciplinary action against any licensee or applicant:

(a) Using false, misleading, or deceptive advertising as an inducement to enter into any contract for a work of improvement, including, but not limited to, any home improvement contract, whereby any member of the public may be misled or injured.

(b) Making any substantial misrepresentation in the procurement of a contract for a home improvement or other work of improvement or making any false promise of character likely to influence, persuade or, induce any person to enter into such a contract.

(c) Any fraud in the execution of, or in the material alteration of any contract, trust deed, mortgage, promissory note, or other document incident to a home improvement transaction or other transaction involving a work of improvement.

(d) Preparing or accepting any trust deed, mortgage, promissory note, or other evidence of indebtedness upon the obligations of a home improvement transaction or other transaction for a work of improvement with knowledge that it specifies a greater monetary obligation than the consideration for the improvement work, which consideration may be a time sale price.

(e) Directly or indirectly publishing any advertisement relating to home improvements or other works of improvement which contains an assertion, representation or statement of fact which is false, deceptive, or misleading, or by any means advertising or purporting to offer to the general public any such improvement work with the intent not to accept contracts for the particular work or at the price which is advertised or offered to the public, except that any advertisement which is subject to and complies with the existing rules, regulations or guides of the Federal Trade Commission shall not be deemed false, deceptive or misleading.

(f) Any person who violates subdivision (b), (c), (d), or (e) as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the

offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment as authorized by this section, the court may impose a fine of not less than five hundred dollars (\$ 500) nor more than twenty-five thousand dollars (\$ 25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

(Amended by Stats. 1994, Chapter 175 (SB 634), urgency, eff. July 9, 1994.)

Representation with Respect to Trademark or Brand Name, Quality or Size; Inclusion in Writing in Contract or Specifications; Failure to Install

7162. (a) Notwithstanding any other provision of law, any representation by a person licensed pursuant to this chapter with respect to a trademark or brand name, quality, or size of any goods or materials, in reference to bathroom fixtures, a sink, stove, refrigerator, lighting, carpeting and other floor surfaces, burglar and smoke alarms, paints, textured coatings, siding and other wall surfaces, insulation, roofing, air conditioning and heating systems, and appliances, to be provided by the person pursuant to a home improvement contract, as defined in Section 7151.2, shall set forth, in writing, in the contract or specifications and shall include a description of the goods or materials, including any brand name, model number, or similar designation.

(b) Failure to install the specific goods or materials as represented as required by this section constitutes a cause for disciplinary action under this chapter.

Home Improvement Contracts; Loans; Enforceability; Rights and Remedies; Waiver

7163. (a) No contract for home improvement shall be enforceable against the buyer if the obtaining of a loan for all or a portion of the contract price is a condition precedent to the contract or if the contractor provides financing, or in any manner assists the buyer to obtain a loan or refers the buyer to any person who may loan or arrange a loan for all or a portion of the contract price unless all of the following requirements are satisfied:

(1) The third party, if any, agrees to make the loan.

(2) The buyer agrees to accept the loan or financing.

(3) The buyer does not rescind the loan or financing transaction, within the period prescribed for rescission, pursuant to the federal Truth in Lending Act (15 U.S.C. Sec. 1601 et seq.) or Regulation Z, if applicable.

(b) Until the requirements of paragraphs (1), (2), and (3) of subdivision (a) are satisfied, it shall be unlawful for the contractor to do any of the following:

(1) Deliver any property or perform any services other than obtaining building permits or other similar services preliminary to the commencement of the home improvement for which no mechanic's lien can be claimed. (2) Represent in

any manner that the contract is enforceable or that the buyer has any obligation thereunder.

Any violation of this subdivision shall render the contract unenforceable.

(c) If the contract is unenforceable pursuant to subdivision (a) or subdivision (b), the contractor shall immediately and without condition return all money, property, and other consideration given by the buyer. If the buyer gave any property as consideration and the contractor does not or cannot return it for whatever reason, the contractor shall immediately return the fair market value of the property or its value as designated in the contract, whichever is greater. Nothing herein shall prohibit a contractor from receiving a downpayment otherwise permitted by law provided the contractor returns the downpayment as herein required if the contract is unenforceable pursuant to subdivision (a) or (b).

(d) (1) Except as provided in paragraph (2), the buyer may retain without obligation in law or equity any services or property provided pursuant to a contract that is unenforceable pursuant to subdivision (a) or subdivision (b).

(2) If the contractor has delivered any property to the buyer pursuant to a contract which is unenforceable pursuant to subdivision (a) or subdivision (b), the buyer shall make the property available to the contractor for return provided that all of the following requirements are satisfied:

(A) The property can be practically returned to the contractor without causing any damage to the buyer.

(B) The contractor, at the contractor's expense, first returns to the buyer any money, property, and other consideration taken by the contractor provided that the property is returned in the condition that it was in immediately prior to its taking. If applicable, the contractor shall also, at its expense, reinstall any property taken in the manner in which the property had been installed prior to its taking.

(C) The contractor, at the contractor's expense, picks up the property within 60 days of the execution of the contract.

(e) For the purpose of this section, "home improvement" means "home improvement" as defined in Section 7151. Goods are included within the definition notwithstanding whether they are to be attached to real property or to be so affixed to real property as to become a part thereof whether or not severable therefrom.

(f) The rights and remedies provided the buyer under this section are nonexclusive and cumulative to all other rights and remedies under other laws.

(g) Any waiver of this section shall be deemed contrary to public policy and shall be void and unenforceable. However, the buyer may waive subdivisions (a) and (b) to the extent that the contract is executed in connection with the making of emergency repairs or services that are necessary for the immediate protection of persons or real or personal property. The buyer's waiver for emergency repairs or services shall be in a dated written statement that describes the emergency, states that the contractor has informed the buyer of subdivisions (a) and (b) and that the buyer waives those provisions, and is signed by each owner of the

property. Waivers made on printed forms are void and unenforceable.

Contract and Changes to be in Writing; Notice Regarding Bonds

7164. (a) Notwithstanding Section 7044, every contract and any changes in a contract, between an owner and a contractor, for the construction of a single-family dwelling to be retained by the owner for at least one year shall be evidenced in writing signed by both parties.

(b) The writing shall contain the following:

(1) The name, address, and license number of the contractor.

(2) The approximate dates when the work will begin and be substantially completed.

(3) A legal description of the location where the work will be done.

(4) The language of the notice required pursuant to Section 7018.5.

(5)(A) A statement prepared by the board through regulation that emphasizes the value of commercial general liability insurance and encourages the owner to verify the contractor's insurance coverage and status.

(B) A check box indicating whether or not the contractor carries commercial general liability insurance, and if that is the case, the name and the telephone number of the insurer.

(c) The writing may also contain other matters agreed to by the parties to the contract. The writing shall be legible and shall clearly describe any other document which is to be incorporated into the contract. Prior to commencement of any work, the owner shall be furnished a copy of the written agreement, signed by the contractor. The provisions of this section are not exclusive and do not relieve the contractor from compliance with all other applicable provisions of law.

(d) Every contract subject to the provisions of this section shall contain, in close proximity to the signatures of the owner and contractor, a notice in at least 10-point bold type or in all capital letters, stating that the owner has the right to require the contractor to have a performance and payment bond and that the expense of the bond may be borne by the owner.

(e) The requirements in paragraphs (5) of subdivision (b) shall become operative three months after the board adopts the regulations referenced in subparagraph (A) of paragraph (5) of subdivision (b).

(Added by Stats. 1991, Chapter 337 (SB 618); Amended by Stats. 2000, Chapter 1005 (SB 2029).)

Swimming Pool Construction Contract; Financing by Third-Party Lender; Substitute Home Improvement Contract Requirements; Conditions

7165. The requirements of this section may be substituted for the requirements of paragraphs (1), (2), and (3) of subdivision (a) of Section 7163 if a swimming pool contract is to be financed by a third-party lender and if all the following conditions are met:

(a) The lender has agreed, in writing, to provide financing to the buyer for the maximum estimated construction cost of the swimming pool.

(b) The lender has provided the buyer a written copy of the terms and conditions of the loan for the maximum estimated construction cost of the swimming pool, including the following terms disclosed in the manner required by the federal Truth in Lending Act and Regulation Z: the annual percentage rate, the finance charge, the amount financed, the total number of payments, the payment schedule, and a description of the security interest to be taken by the lender.

(c) The lender has agreed in writing to the following:

(1) To offer to loan the maximum estimated construction cost on the terms and conditions disclosed pursuant to subdivision (b).

(2) If the construction cost of the swimming pool is determined after the completion of excavation to be less

than the maximum estimated construction cost, to offer to loan the lesser amount needed to complete the construction of the swimming pool on the same security as, and at an annual percentage rate and monthly payment amount not to exceed, that disclosed in subdivision (b).

The lender's written agreement shall state the duration of the offer, which shall not be less than 15 days following the completion of the excavation of the swimming pool.

(d) The buyer acknowledges receipt of the writings required by subdivisions (a), (b), and (c) and, no sooner than three business days after receiving all of these writings, requests on the form prescribed in subdivision (e) that the contractor begin performance of the swimming pool contract prior to the expiration of any rescission period applicable to the loan.

(e) The request of a buyer, described in subdivision (d), shall be set forth on a document separate and apart from the swimming pool contract and shall contain the following notice in at least 10-point type unless otherwise stated:

"NOTICE

Under the law, this contract is not enforceable until:

(1) A third party agrees to make a loan to finance the construction cost of the swimming pool;

(2) You agree to accept the loan; and

(3) You do not cancel the loan within the period prescribed for cancellation under the federal Truth in Lending Act or Regulation Z (usually three business days after the loan is consummated).

Until the cancellation period is over, the contractor cannot deliver any materials or perform any services except preliminary services for which no mechanic's lien can be claimed.

However, as an alternative to the above, you can ask the contractor to start work and deliver materials before the cancellation period on the loan is over if all of the following have occurred:

(1) The lender has agreed, in writing, to provide you with financing for up to the maximum estimated construction cost of the swimming pool.

(2) The lender has provided you with a written copy of the terms and conditions of a loan for the maximum estimated cost, including the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, and a description of the security interest to be taken by the lender.

(3) The lender has agreed in writing to offer these terms and conditions for a period not less than 15 days following completion of the excavation of the swimming pool.

(4) Three business days have passed since you received the writing mentioned in paragraphs (1), (2), and (3), and you then sign a copy of this form to request that the contractor begin construction of the swimming pool before the cancellation period on your loan is over.

The first day you can sign the request for the contractor to begin construction of the swimming pool is

(contractor to insert third business day after buyer receives writings described in subdivisions (a), (b), and (c))

If you sign this request, the contractor will be permitted to immediately begin performance of the contract, and if the contractor is not paid in accordance with the terms of the contract, he or she may file a lien against your property for the value of the labor and materials provided. *[This paragraph shall be printed in 12-point type.]*

REQUEST

I/we request that the contractor immediately start construction of the swimming pool.

Date

Buyer(s)

(f) The contractor shall provide the buyer a copy of the buyer's signed request at the time of signature.

(g) This section applies to each buyer who signs the swimming pool contract or the promissory note, other evidence of indebtedness, or security instrument incident to the loan for swimming pool construction.

(h) For the purpose of this section, "business day" has the meaning provided in Section 9 of the Civil Code.

See Health and Safety Code Section 115920, Citations; 115921, Definitions; 115922, Safety Features; 115923, Enclosure; 115924, Consumer Notice; 115925, Inapplicability, in Appendix.

Application of Article 10 of the Contractors License Law

7166. The provisions of Article 10 shall not apply to contracts for the construction of swimming pools to be built for the use and enjoyment of other than a single-family unit upon or contiguous to premises occupied only by a single-family unit, nor shall they apply to the construction of swimming pools built as part of an original building plan by the same contractor who builds a single-family dwelling unit on the premises.

Swimming Pool Construction Contract; Noncompliance Voids

7167. Any contract the primary purpose of which is the construction of a swimming pool which does not substantially comply with the applicable provisions of subdivisions (b), (c), (d), (e), (f), and (h) of Section 7159, shall be void and unenforceable by the contractor as contrary to public policy.

Attorney Fee

7168. In any action between a person contracting for construction of a swimming pool and a swimming pool contractor arising out of a contract for swimming pool construction, the court shall award reasonable attorney's fees to the prevailing party.

ARTICLE 11. ASBESTOS CONSULTANTS

Certification Required

7180. (a) No person shall, on or after July 1, 1992, engage in the practice of an asbestos consultant as defined in Section 7181, or as a site surveillance technician as defined in Section 7182, unless he or she is certified by the Division of Occupational Safety and Health pursuant to regulations required by subdivision (b) of Section 9021.5 of the Labor Code.

(b) Certification as an asbestos consultant or site surveillance technician shall not be required when a licensed contractor or registered asbestos abatement contractor takes no more than 12 bulk samples of suspected asbestos-containing material that is required to be removed, repaired, or disturbed as part of a construction project in a residential dwelling solely for any of the following purposes: (1) bid preparation for asbestos abatement; (2) evaluating exposure to its own employees during construction or asbestos abatement; or (3) determining for its own

purposes or for the purpose of communicating whether or not a contract for asbestos abatement has been satisfactorily completed. Persons taking samples for the purposes described in this section shall be certified building inspectors under the Asbestos Hazard Emergency Response Act, as specified in Section 763 of Title 40 of the Code of Federal Regulations, appendix (c) to subpart (e). No licensed contractor or asbestos abatement contractor may provide professional health and safety services or perform any asbestos risk assessment. A bid for asbestos abatement may communicate the results and location of sampling for the presence of asbestos and how the asbestos will be abated. This section does not affect the requirement that asbestos abatement contractors be registered under Section 6501.5 of the Labor Code, nor does it permit a licensed contractor or asbestos abatement contractor to perform clearance air monitoring following asbestos abatement, unless otherwise permitted by law.

Building Owners or Operators; Contracts with Certified Persons

7180.5. When a building owner or operator engages the services of a person to perform asbestos consulting or site surveillance technician activities as defined in Sections 7181 and 7182 after July 1, 1992, the building owner or operator shall contract with a person who is certified by the Division of Occupational Safety and Health pursuant to the regulations required by subdivision (b) of Section 9021.5 of the Labor Code.

"Asbestos Consultant" Defined

7181. An "asbestos consultant," as used in this chapter, means any person who contracts to provide professional health and safety services relating to asbestos-containing material, as defined in subdivision (b) of Section 6501.8 of the Labor Code, including building inspections, abatement project design, contract administration, supervision of site surveillance technicians as defined in Section 7182, sample collections, preparation of asbestos management plans, and clearance air monitoring.

"Site Surveillance Technician" Defined

7182. A "site surveillance technician" means any person who acts as an independent onsite representative of an asbestos consultant who monitors the asbestos abatement activities of others, provides asbestos air monitoring services for area and personnel samples, and performs building surveys and contract administration at the direction of an asbestos consultant.

Notice of Acceptance or Deficiency; Certification

7183. (a) Within 15 days of receipt of an application for certification pursuant to this article, the division shall inform the applicant in writing either (1) that the application is complete and accepted, or (2) that it is deficient and that additional information, documentation, or examination, specified in the notification, is required to complete the application. Within 45 days of the date of filing of a completed application, the division shall issue to each person who qualifies for certification pursuant to this article, a certification card which shall identify the holder

thereof and the type of certification for which he or she has qualified. If the division cannot comply with the notification deadlines specified in this section, the division shall issue a provisional certification card until all procedures specified in this section are completed.

(b) The certification required by this article shall satisfy all certification requirements of the division for asbestos consultants and site surveillance technicians.

Enforcement; Revocation of Certification

7183.5. The division shall enforce this article. In the event the division determines that a certified asbestos consultant or site surveillance technician obtained certification under false pretenses, or that a certified asbestos consultant or site surveillance technician acted in a grossly negligent or fraudulent manner, or engaged in repeated acts of negligence, the division shall revoke that person's certification. The division shall only revoke a certification after complying with all of the procedural requirements of Chapter 5 (commencing with Section 11500) of Division 3 of Part 1 of Title 2 of the Government Code.

Requirements for Certification; Asbestos Consultants

7184. A person shall qualify as a certified asbestos consultant by meeting all of the following requirements:

(a) Having any one of the following:

(1) One year of asbestos-related experience, and a bachelor of science degree in engineering, architecture, industrial hygiene, construction management, or a related biological or physical science.

(2) Two years of asbestos-related experience, and a bachelor's degree.

(3) Three years of asbestos-related experience, and an associate of arts degree in engineering, architecture, industrial hygiene, construction management, or a related biological or physical science.

(4) Four years of asbestos-related experience and a high school diploma or its equivalent.

(b) Possession of a valid federal Asbestos Hazard Emergency Response Act (Subchapter II (commencing with Section 2641) of Chapter 53 of Title 15 of the United States Code) certificate for the type of work being performed, or its equivalent, as determined by the division.

(c) Demonstration of proficiency by achieving a passing score as determined by the division on an examination approved or administered by the division including, but not limited to, the following subjects:

(1) Physical characteristics of asbestos.

(2) Health effects of asbestos.

(3) Federal Occupational Safety and Health Administration, Division of Occupational Safety and Health, Environmental Protection Agency, air quality management districts, and State Department of Health Services regulatory requirements, including protective clothing, respiratory protection, exposure limits, personal hygiene, medical monitoring, disposal, and general industry safety hazards.

(4) State-of-the-art asbestos abatement and control work

procedures. The division shall define and incorporate into the certification standards the term "state-of-the-art" for purposes of this article, in the regulations required by subdivision (b) of Section 9021.5 of the Labor Code.

(5) Federal Asbestos Hazard Emergency Response Act training information and procedures for inspectors, management planners, and supervisors, as provided for under Subchapter II (commencing with Section 2641) of Chapter 53 of Title 15 of the United States Code, or the equivalent, as determined by the division. 5(6) Information concerning industrial hygiene sampling methodology, including asbestos sampling and analysis techniques and recordkeeping.

Requirements for Certification; Site Surveillance Technicians

7185. A person shall qualify as a certified site surveillance technician by meeting all of the following requirements:

(a) Having six months of asbestos-related experience under the supervision of an asbestos consultant.

(b) Possession of a high school diploma or equivalent.

(c) Possession of a valid federal Asbestos Hazard Emergency Response Act (Subchapter II (commencing with Section 2641) of Chapter 53 of Title 15 of the United States Code) certificate for the type of work being performed, or its equivalent, as determined by the division.

(d) Demonstration of proficiency by achieving a passing score, as determined by the division, on an examination approved or administered by the division covering the following subjects:

(1) Physical characteristics of asbestos.

(2) Health effects of asbestos.

(3) Federal Occupational Safety and Health Administration, Division of Occupational Safety and Health, Environmental Protection Agency, air quality management districts, and State Department of Health Services regulatory requirements, including protective clothing, respiratory protection, exposure limits, personal hygiene, medical monitoring, and general industry safety hazards. (4) State-of-the-art asbestos abatement and control work procedures.

(5) Industrial hygiene sampling methodology, including sampling techniques and recordkeeping.

Conflicts of Interest; Intent of Legislature

7187. When a building owner or operator contracts with an asbestos consultant or site surveillance technician for performance of the activities described in Sections 7181 and 7182, that asbestos consultant or site surveillance technician shall not have any financial or proprietary interest in an asbestos abatement contractor hired for the same project. However, this section shall not preclude the hiring of a consultant by a contractor for the purpose of providing health and safety services for the personnel of the contractor. This section shall not apply when a licensed contractor or registered asbestos abatement contractor takes no more than 12 bulk samples of suspected asbestos-containing material that is required to be removed, repaired, or disturbed as part of a construction project in a

residential dwelling solely for any of the following purposes: (1) bid preparation for asbestos abatement; (2) evaluating exposure to its own employees during construction or asbestos abatement; or (3) determining for its own purposes or for the purpose of communicating whether or not a contract for asbestos abatement has been satisfactorily completed. Persons taking samples for the purposes described in this section shall be certified building inspectors under the Asbestos Hazard Emergency Response Act, as specified in Section 763 of Title 40 of the Code of Federal Regulations, appendix (c) to subpart (e). No licensed contractor or asbestos abatement contractor may provide professional health and safety services or perform any asbestos risk assessment. A licensed contractor or asbestos abatement contractor may seek compensation for bid preparation, including the cost of laboratory analysis of asbestos-containing material.

It is the intent of the Legislature in enacting this section to make certain that the asbestos-related work performed by a consultant, including, but not limited to, clearance air monitoring, project design, and contract administration, is performed in a manner which provides for independent professional judgment undertaken without consideration of the financial or beneficial interest of the contractor.

Penalties

7189. Any person who engages in the practices of an asbestos consultant or a site surveillance technician, who is not certified pursuant to this article, or who violates Section 7187, is subject to one of the following penalties: (a) Conviction of a first offense is an infraction punishable by a fine of not less than one thousand dollars (\$1,000) or more than three thousand dollars (\$3,000).

(b) Conviction of a subsequent offense is a misdemeanor requiring revocation or suspension of any asbestos consultant's or site surveillance technician's certification, and a fine not less than three thousand dollars (\$3,000) or more than five thousand dollars (\$5,000), or imprisonment in the county jail not exceeding one year, or both the fine and imprisonment. The division shall only impose these penalties after complying with all of the procedural requirements of Chapter 5 (commencing with Section 11500) of Division 3 of Part 1 of Title 2 of the Government Code.

Application of Article

7189.5. This article shall apply to asbestos abatement projects within the meaning of asbestos-related work as defined in Section 6501.8 of the Labor Code, and which involves 100 square feet or more of surface area of asbestos containing material.

Construction of Article

7189.7. (a) Nothing in this article shall be construed to require agencies of the state to contract with asbestos consultants or site surveillance technicians who are not employees of the state as long as employees of the state who are assigned to perform the activities described in Sections 7181 and 7182 have been certified by the division pursuant to the regulations required by subdivi-

sion (b) of Section 9021.5 of the Labor Code. Where feasible, the state shall assign a state civil service classification of associate industrial hygienist or senior industrial hygienist to carry out asbestos consultation activities as described in Section 7181 for state-owned and leased buildings. The individuals in the classification assigned shall be certified as required in this article before performing these activities.

(b) Nothing in this article shall be construed to require attorneys who provide legal advice on asbestos-related matters to building owners or operators to be certified by the division pursuant to the regulations required by subdivision (b) of Section 9021.5 of the Labor Code.

ARTICLE 12. PROHIBITIONS

Use of Name or Position of Public Official in Advertisement or Promotional Material; Disclaimer

7190. (a) The name or position of a public official may not be used in an advertisement or any promotional material by a person licensed under this chapter, without the written authorization of the public official. A printed advertisement or promotional material that uses the name or position of a public official with that public official's written authorization, shall also include a disclaimer in at least 10-point roman boldface type, that shall be in a color or print which contrasts with the background so as to be easily legible, and set apart from any other printed matter. The disclaimer shall consist of a statement that reads "The name of (specify name of public official) does not imply that (specify name of public official) endorses this product or service in (his or her) official capacity and does not imply an endorsement by any governmental entity." If the advertisement is broadcast, this statement shall be read in a clearly audible tone of voice.

(b) For purposes of this section, "public official" means a member, officer, employee, or consultant of a local government agency, as defined in Section 82041 of the Government Code, or state agency, as defined in Section 82049 of the Government Code.

(Added by Stats. 1994, Chapter 1135 (AB 3302).)

See Civil Code Section 1770, Unfair Practices, in Appendix.

Title of Provision for Arbitration of Disputes in Contract for Work on Specified Residential Property

7191. (a) If a contract for work on residential property with four or fewer units contains a provision for arbitration of a dispute between the principals in the transaction, the provision shall be clearly titled "ARBITRATION OF DISPUTES."

If a provision for arbitration is included in a printed contract, it shall be set out in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type, and if the provision is included in a typed contract, it shall be set out in capital letters.

(b) Immediately before the line or space provided for the parties to indicate their assent or nonassent to the arbitration provision described in subdivision (a), and immedi-

ately following that arbitration provision, the following shall appear:

“NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE BUSINESS AND PROFESSIONS CODE OR OTHER APPLICABLE LAWS. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.” “WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION TO NEUTRAL ARBITRATION.”

If the above provision is included in a printed contract, it shall be set out either in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type, and if the provision is included in a typed contract, it shall be set out in capital letters.

(c) A provision for arbitration of a dispute between a principal in a contract for work on a residential property with four or fewer units that does not comply with this section may not be enforceable against any person other than the licensee.

(d) This section does not limit the board’s authority to investigate complaints or to discipline a licensee for violations of this code.

Definitions: Home Inspection

7195. For purposes of this chapter, the following definitions apply:

(a) (1) “Home inspection” is a noninvasive, physical examination, performed for a fee in connection with a transfer, as defined in subdivision (e), of real property, of the mechanical, electrical, or plumbing systems or the structural and essential components of a residential dwelling of one to four units designed to identify material defects in those systems, structures and components. “Home inspection” also includes any consultation regarding the property that is represented to be a home inspection or any confusingly similar term.

(2) “Home inspection,” if requested by the client, may include an inspection of energy efficiency. Energy efficiency items to be inspected may include the following:

(A) A noninvasive inspection of insulation R-values in attics, roofs, walls, floors, and ducts.

(B) The number of window glass panes and frame types.

(C) The heating and cooling equipment and water heating systems.

(D) The age and fuel type of major appliances.

(E) The exhaust and cooling fans.

(F) The type of thermostat and other systems.

(G) The general integrity and potential leakage areas of walls, window areas, doors, and duct systems.

(H) The solar control efficiency of existing windows.

(b) A “material defect” is a condition that significantly affects the value, desirability, habitability, or safety of the dwelling. Style or aesthetics shall not be considered in determining whether a system, structure, or component is defective.

(c) A “home inspection report” is a written report prepared for a fee and issued after a home inspection. The report clearly describes and identifies the inspected systems, structures, or components of the dwelling, any material defects identified, and any recommendations regarding the conditions observed or recommendations for evaluation by appropriate persons.

(d) A “home inspector” is any individual who performs a home inspection.

(e) “Transfer” is a transfer by sale, exchange, installment land sales contract, as defined in Section 2985 of the Civil Code, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of real property or residential stock cooperative, improved with or consisting of not less than one nor more than four dwelling units.

Duties

7196. It is the duty of a home inspector who is not licensed as a general contractor, structural pest control operator, or architect, or registered as a professional engineer to conduct a home inspection with the degree of care that a reasonably prudent home inspector would exercise.

(Added by Stats. 1996, Chapter 338 (SB 258).)

Application

7196.1. (a) Nothing in this chapter shall be construed to allow home inspectors who are not registered engineers to perform any analysis of the systems, components, or structural integrity of a dwelling that would constitute the practice of civil, electrical, or mechanical engineering, or to exempt a home inspector from Chapter 3 (commencing with Section 5500), Chapter 7 (commencing with Section 6700), Chapter 9 (commencing with Section 7000), or Chapter 14 (commencing with Section 8500) of Division 3.

(b) This chapter does not apply to a registered engineer, licensed land surveyor, or licensed architect acting pursuant to his or her professional registration or license, nor does it affect the obligations of a real estate licensee or transferor under Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 3 of Division 2 of, or Article 2 (commencing with Section 2079) of Chapter 3 of Title 6 of Part 4 of Division 3 of, the Civil Code.

Unfair Practices

7197. It is an unfair business practice for a home inspector, a company that employs the inspector, or a company that is controlled by a company that also has a financial interest in a company employing a home inspector, to do any of the following:

- (a) To perform or offer to perform, for an additional fee, any repairs to a structure on which the inspector, or the inspector's company, has prepared a home inspection report in the past 12 months.
- (b) Inspect for a fee any property in which the inspector, or the inspector's company, has any financial interest or any interest in the transfer of the property.
- (c) To offer or deliver any compensation, inducement, or reward to the owner of the inspected property, the broker, or agent, for the referral of any business to the inspector or the inspection company.
- (d) Accept an engagement to make an inspection or to prepare a report in which the employment itself or the fee

payable for the inspection is contingent upon the conclusions in the report, preestablished findings, or the close of escrow.

(e) A home protection company that is affiliated with or that retains the home inspector does not violate this section if it performs repairs pursuant to claims made under the home protection contract.

Public Policy

7198. Contractual provisions that purport to waive the duty owed pursuant to Section 7196, or limit the liability of the home inspector to the cost of the home inspection report, are contrary to public policy and invalid.

Statute of Limitation

7199. The time for commencement of a legal action for breach of duty arising from a home inspection report shall not exceed four years from the date of the inspection.

(For a summary of changes to the Business and Professions Code resulting from the 2002 Legislative Session, please see page v.)

